

170 FERC ¶ 61,267  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Ameren Illinois Company

Docket No. ER19-1276-000

ORDER ON FORMAL CHALLENGE

(Issued March 27, 2020)

1. On March 13, 2019, Ameren Illinois Company (Ameren Illinois) submitted its annual informational formula rate update (2019 Annual Update) as required by the formula rate protocols set forth in Attachment O-AIC of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).<sup>1</sup> On April 15, 2019, Southwestern Electric Cooperative, Inc. (Southwestern)<sup>2</sup> submitted a formal challenge pursuant to section IV of Attachment O-AIC to the MISO Tariff, challenging certain inputs to Ameren Illinois' formula rate (2019 Formal Challenge). As discussed below, we grant in part, and deny in part, the 2019 Formal Challenge and direct Ameren Illinois to submit a compliance filing within 60 days of the date of this order.

**I. Background**

2. Attachment O of MISO's Tariff sets forth the formula rate templates and protocols under which Ameren Illinois and other MISO transmission owners recover their respective annual transmission revenue requirements (ATRR), and through which they establish charges for transmission service for facilities they own that are under MISO's functional control. To calculate the ATRR, Ameren Illinois projects the values that will populate the Attachment O-AIC formula rate template for each calendar-year rate year and calculates a true-up of the projected values after the actual data becomes available in the FERC Form No. 1 in April following the end of the rate year. Any difference between the projected ATRR and actual ATRR for that previous rate year will then be

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<sup>1</sup> Ameren Illinois Informational Filing of Annual Formula Rate Update, Transmittal Letter at 1.

<sup>2</sup> Southwestern is an electric distribution cooperative that serves rural consumers in Illinois and is a MISO transmission customer located within the Ameren Illinois rate zone. 2019 Formal Challenge at 2.

reflected in an appropriate true-up adjustment to the ATRR for the next calendar-year rate year following the calculation of the true-up. Thus, Ameren Illinois' 2019 Annual Update includes the Attachment O-AIC formula rate true-up for the 2017 calendar-year rate year (2017 True-Up), which details the 2017 annual formula rate true-up, actual net revenue requirement, and true-up adjustment. The 2019 Annual Update also includes the Attachment O-AIC formula rate projected ATRR for the 2019 calendar-year rate year (2019 Projection). Therefore, Ameren Illinois charges its transmission customers in 2019 based on the rate developed in the 2019 Projection and the 2017 True-Up.

3. Ameren Illinois' protocols detail how its formula rate is to be updated annually and how it can be challenged. Section II of the protocols requires Ameren Illinois to submit its annual formula rate true-up, actual net revenue requirement, and true-up adjustment for the previous calendar-year rate year to MISO by June 1, and cause such information to be posted on the MISO website and open access same-time information system (OASIS). Section II of the protocols also requires Ameren Illinois to submit its projected net revenue requirement for the upcoming calendar-year rate year to MISO by September 1, and cause such information to be posted on the MISO website and OASIS. Section IV of the protocols states that interested parties shall have until the following January 31 to review the inputs, supporting explanations, allocations, and calculations and to notify Ameren Illinois of any specific informal challenges to the formula rate annual true-up or projected net revenue requirement. Section IV specifies that, after submitting an informal challenge, a party shall have until April 15 to submit a formal challenge with the Commission.

4. Informal and formal challenges are limited to seven avenues of inquiry listed in section IV.D of the protocols: (1) the extent or effect of an accounting change; (2) whether the annual true-up or projected net revenue requirement fails to include data properly recorded in accordance with these protocols; (3) the proper application of the formula rate and procedures in these protocols; (4) the accuracy of data and consistency with the formula rate of the calculations shown in the annual true-up and projected net revenue requirement; (5) the prudence of actual costs and expenditures; (6) the effect of any change to the underlying Uniform System of Accounts or FERC Form No. 1; or (7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula. Section IV.J of the protocols states that the annual true-up and projected revenue requirement shall not be subject to challenge for the purpose of modifying the formula rate, and that modifications to the formula rate will require, as applicable, a filing under section 205 or section 206 of the Federal Power Act (FPA).<sup>3</sup>

5. On April 15, 2016, Southwestern and Southern Illinois Power Cooperative submitted a formal challenge to Ameren Illinois' 2016 annual informational formula rate

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<sup>3</sup> 16 U.S.C. §§ 824d, 824e (2018).

update (2016 Formal Challenge). On September 22, 2016, the Commission denied the 2016 Formal Challenge.<sup>4</sup> On October 21, 2016, Southwestern submitted a request for rehearing and clarification of the 2016 Formal Challenge Order. On October 24, 2016, Ameren Services Company (Ameren Services), on behalf of Ameren Illinois, (collectively, Ameren) submitted a request for rehearing of the 2016 Formal Challenge Order. On January 18, 2018, the Commission denied both requests for rehearing of the 2016 Formal Challenge Order and provided clarification of the Commission's finding in the 2016 Formal Challenge Order related to Ameren Illinois' inclusion of contribution in aid of construction (CIAC)-related accumulated deferred income taxes (ADIT) in Attachment O-AIC.<sup>5</sup> On February 20, 2018, Ameren sought clarification or, in the alternative, rehearing of the 2016 Formal Challenge Order on Rehearing. On October 18, 2018, the Commission granted Ameren's requests for clarification, in part, and rehearing, in part.<sup>6</sup> On November 19, 2018, Southwestern filed a request for rehearing of the Order on Clarification and Rehearing, and on April 10, 2019, Southwestern withdrew the request for rehearing.

6. On April 17, 2017, Southwestern submitted a formal challenge to Ameren Illinois' 2017 annual informational formula rate update (2017 Formal Challenge). On June 20, 2019, the Commission issued an order granting in part and denying in part the 2017 Formal Challenge.<sup>7</sup> On July 22, 2019, Southwestern filed a request for rehearing of the 2017 Formal Challenge Order. On October 17, 2019, the Commission issued an order denying rehearing of the 2017 Formal Challenge Order, providing additional explanation, and directing Ameren Illinois to submit a compliance filing.<sup>8</sup>

7. On April 16, 2018, Southwestern submitted a formal challenge to Ameren Illinois' 2018 annual informational formula rate update (2018 Formal Challenge). On

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<sup>4</sup> *Ameren Illinois Co.*, 156 FERC ¶ 61,209 (2016) (2016 Formal Challenge Order).

<sup>5</sup> *Ameren Illinois Co.*, 162 FERC ¶ 61,025 (2018) (2016 Formal Challenge Order on Rehearing).

<sup>6</sup> *Ameren Illinois Co.*, 165 FERC ¶ 61,025 (2018) (Order on Clarification and Rehearing).

<sup>7</sup> *Ameren Illinois Co.*, 167 FERC ¶ 61,247 (2019) (2017 Formal Challenge Order).

<sup>8</sup> *Ameren Illinois Co.*, 169 FERC ¶ 61,042 (2019) (2017 Formal Challenge Order on Rehearing).

November 22, 2019, the Commission issued an order granting in part and denying in part the 2018 Formal Challenge.<sup>9</sup>

8. On May 31, 2018, Ameren Illinois posted its 2017 True-Up.<sup>10</sup> On August 31, 2018, Ameren Illinois posted its 2019 Projection to its OASIS site for public view.<sup>11</sup> On January 31, 2019, Southwestern sent Ameren Illinois an informal challenge to the 2017 True-Up and 2019 Projection (2019 Informal Challenge). On February 28, 2019, Ameren Illinois responded to the 2019 Informal Challenge. On March 13, 2019, Ameren Illinois submitted its 2019 Annual Update. On April 15, 2019, Southwestern submitted this 2019 Formal Challenge.

## **II. Notice and Responsive Pleadings**

9. Notice of the 2019 Formal Challenge was published in the *Federal Register*, 84 Fed. Reg. 27,776 (June 14, 2019), with interventions or protests due on or before July 1, 2019. None was filed.

10. On July 2, 2019, Ameren filed a response to the 2019 Formal Challenge.

11. On August 5, 2019, Southwestern filed a motion for leave to answer and answer to Ameren's response. On January 15, 2020, Ameren filed a motion for leave to answer and answer to Southwestern's answer.

## **III. Discussion**

### **A. Procedural Matters**

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Southwestern and Ameren, as they have provided information that assisted us in our decision-making process.

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<sup>9</sup> *Ameren Illinois Co.*, 169 FERC ¶ 61,147 (2019) (2018 Formal Challenge Order).

<sup>10</sup> The 2017 True-Up was revised on July 20, 2018, and January 4, 2019. 2019 Formal Challenge at 3.

<sup>11</sup> The 2019 Projection was revised on January 4, 2019. 2019 Formal Challenge at 3.

**B. Substantive Matters****1. Sufficiency of 2019 Formal Challenge****a. 2019 Formal Challenge and Answers**

13. Southwestern states that its 2019 Formal Challenge identifies the faults related to Ameren Illinois' 2019 Projections, 2017 True-Up, or both. Southwestern further states that all of these faults were identified in its 2019 Informal Challenge.<sup>12</sup> Southwestern alleges that Ameren Illinois' ATRR should be reduced by at least \$62.7 million, or 23.14%.<sup>13</sup> Southwestern provides a list of proposed rate base and expense adjustments, and supporting workpapers, which are discussed in more detail in the sections below.<sup>14</sup>

14. Southwestern acknowledges that many of the issues presented in the 2019 Formal Challenge were also presented in the 2017 and 2018 Formal Challenge proceedings. However, Southwestern contends that a ruling on these issues in the 2017 and 2018 Formal Challenges will not achieve a resolution as to the rates that became effective on January 1, 2019, i.e., the rates that are at issue in this proceeding. Southwestern adds that there are a number of proceedings before the Commission related to the Tax Cuts and Jobs Act of 2017,<sup>15</sup> including one proceeding related to Ameren Illinois, that may have a bearing on the rates at issue in this proceeding.<sup>16</sup> Southwestern contends that Ameren is misusing its formula by inappropriately allocating a number of retail business-related costs and expenses to transmission service and by manipulating its regulatory expenses to ensure over-recovery.<sup>17</sup>

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<sup>12</sup> 2019 Formal Challenge at 4.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> We note that Southwestern has withdrawn the 2019 Formal Challenge with respect to expenses related to "Fuel Accounting," "Risk Management," "Business Development," and "Industrial Relations Counseling," as well as with respect to Equity allowance for funds used during construction (AFUDC). *See* Southwestern Answer at 22, 27, 41. We therefore find the 2019 Formal Challenge to be resolved with respect to these issues.

<sup>15</sup> Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

<sup>16</sup> 2019 Formal Challenge at 7 (referencing Docket No. ER17-2323).

<sup>17</sup> 2019 Formal Challenge at 8.

15. In response, Ameren argues that the Commission must deny the 2019 Formal Challenge as unsupported and contrary to Commission precedent because, according to Ameren, Southwestern is primarily rehashing claims it made with respect to Ameren Illinois' 2016, 2017, and 2018 annual informational formula rate updates, making little or no effort to distinguish its prior claims.<sup>18</sup> According to Ameren, Southwestern's various arguments are not focused on the items enumerated in section IV.D of the protocols but are in some instances inappropriate attempts to modify the Attachment O-AIC formula rate in violation of section IV.J of the protocols or are improper and misguided attempts to change Ameren Illinois' accounting. Ameren asserts that most of Southwestern's arguments are not focused on issues of fact but are issues of policy or law, and thus the Commission can and should address the 2019 Formal Challenge summarily. Ameren contends that Southwestern is not challenging the level or prudence of a rate base item or expense, but rather is challenging whether any amount in a particular category should be included in Attachment O-AIC.<sup>19</sup>

16. In its answer, Southwestern submits that it is not attempting to change the formula rate but rather is challenging what it believes to be improper recording of a number of costs and expenses by Ameren Illinois. Southwestern states that, in the 2019 Formal Challenge, it not only pointed out costs that are erroneously recorded, but also provided appropriate alternative accounting for these costs. Southwestern contends that nowhere in the 2019 Formal Challenge does it propose a change in Ameren Illinois' formula rate.<sup>20</sup> Further, Southwestern claims that its 2019 Formal Challenge raises a number of factual issues with substantial dollar inputs. It argues that, to the extent that the Commission cannot rule in Southwestern's favor on these issues, it should set these matters for hearing so that they can be resolved through a hearing process. Southwestern argues that denial of such a process will deprive it of its right to due process and will result in rates that are not just and reasonable.

**b. Commission Determination**

17. We disagree with Southwestern's argument that denial of its request for a hearing process will deprive it of its right to due process. As the Commission noted in *Pioneer*, federal courts have held that a formal trial-type hearing is unnecessary where there are no material facts in dispute.<sup>21</sup> The Commission further emphasized that it is not sufficient

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<sup>18</sup> Ameren Response at 7-8.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> Southwestern Answer at 4.

<sup>21</sup> *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044, at P 35 (2010) (*Pioneer*) (citing *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993)).

for a protesting party to merely allege an issue of disputed fact—parties “must make an adequate proffer of evidence to support them.”<sup>22</sup> In *Pioneer*, the Commission emphasized that “[t]he Commission is only required to provide a trial-type hearing if the material facts in dispute cannot be resolved on the basis of written submissions in the record.”<sup>23</sup> Here, we find that there are no material facts in dispute and the issues raised by Southwestern can be decided based on the written record; thus we decline to set any aspect of the 2019 Formal Challenge for hearing.

**2. Retired Plant ADIT (2017 True-Up Only)**

**a. 2019 Formal Challenge and Answers**

18. Southwestern asserts that ADIT associated with retired plants should be refunded to customers because, with the retirement of a plant, the gross book, accumulated depreciation, and ADIT are all removed from the books. Southwestern argues that, because no amount associated with retired plant including ADIT would ever be included in Ameren Illinois’ future income tax returns, Ameren Illinois will now inappropriately keep this ADIT amount forever, despite Ameren Illinois’ customers never receiving the benefits of this ADIT.<sup>24</sup> In addition, Southwestern argues that Ameren also acknowledged that it would have excess ADIT associated with the retired plant ADIT, which is caused by the reduction in the income tax rate, and that Ameren does not show where such excess ADIT is included in its ATRR calculations. Southwestern avers that the entire ADIT associated with the retired plant is excess ADIT.<sup>25</sup>

19. In response, Ameren states that, in the year that a plant is retired and the retirement is included in the tax returns of Ameren Illinois, any associated deferred tax liability becomes payable to the government. Ameren states that the deferred tax liability is reversed and a current tax liability due to the government is created; as such, Ameren Illinois does not keep the associated ADIT. Ameren argues that Southwestern misstated Ameren’s statement on excess ADIT when Southwestern suggests that Ameren Illinois conceded that it “would have excess ADIT associated with the retired plant ADIT, which is caused by the reduction in the income tax rate.”<sup>26</sup> Ameren clarifies that it stated that,

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<sup>22</sup> *Id.* (quoting *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 129 (D.C. Cir. 1982)).

<sup>23</sup> *Id.* n.73.

<sup>24</sup> 2019 Formal Challenge at 9-10.

<sup>25</sup> *Id.* at 10.

<sup>26</sup> Ameren Response at 9-10.

when the federal tax rate decreased on January 1, 2018, as a result of the Tax Cuts and Jobs Act, a portion of the ADIT balance was no longer payable to the government. Ameren states that the portion of ADIT, which is no longer owed to the government beginning January 1, 2018, is considered excess ADIT and will be refunded to customers over some future period based on tax law and guidance from regulators.<sup>27</sup> Finally, Ameren asserts there is no excess ADIT associated with retired plant in 2017, because the changed tax rate did not become effective until January 1, 2018.

20. In its answer, Southwestern argues that Ameren's response merely provides a general description of how ADIT reverses over time and that Ameren ignores the fact that, when a plant is retired, all the amounts related to the retired plant, including ADIT associated with the retired facilities, are removed from its books. Southwestern contends that, unless Ameren can provide evidence that the ADIT associated with Ameren Illinois' retired plant is still retained as an ADIT entry in its books and would continue to be used as a rate base reduction or as part of excess ADIT to be flowed back to customers, this retired plant ADIT would never be reflected in Ameren Illinois' income tax returns or rates and Ameren Illinois will inappropriately keep this amount forever. Southwestern adds that Ameren Illinois should be required to provide the account numbers to which the ADIT associated with its retired plant is recorded.<sup>28</sup>

21. Ameren contends that Southwestern is conflating two distinct issues: (1) the return of ADIT as a result of an asset retirement in 2017; and (2) the return of excess ADIT created as a result of the Tax Cuts and Jobs Act. Ameren reiterates that no excess ADIT from the Tax Cuts and Jobs Act was reflected in the 2017 True-Up because the effective date of the Tax Cuts and Jobs Act was January 1, 2018. Ameren submits that, because all of the ADIT associated with the retirements in 2017 has been paid to the government, Southwestern's proposed adjustment to Ameren Illinois' ATRR should be rejected by the Commission.<sup>29</sup>

**b. Commission Determination**

22. We are not persuaded by Southwestern's argument that a retirement of plant prior to being fully depreciated results in refunds of the remaining ADIT. Plant ADIT is made up of tax timing differences in depreciation between book and tax value over the life of an asset, which in turn creates a difference in basis through accumulated depreciation at any given point prior to the retirement of a plant asset. Upon retirement, the ADIT related to depreciation is reversed when the gain or loss is recognized and payable to the

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<sup>27</sup> *Id.* at 10.

<sup>28</sup> Southwestern Answer at 7.

<sup>29</sup> Ameren Answer at 3.



Internal Revenue Service (IRS) and the ADIT related to the difference in basis for the plant asset is removed from the books because of the operation of the tax laws and regulations.<sup>30</sup> Therefore, Ameren Illinois does not “keep” the associated ADIT. Further, plant retired in 2017 would not have associated excess ADIT because the reduction in the federal income tax rate associated with the Tax Cuts and Jobs Act did not become effective until January 1, 2018.

### **3. General and Intangible Plant**

#### **a. 2019 Formal Challenge and Answers**

23. Southwestern asserts that six General and Intangible Plant facilities listed by Ameren Illinois in the 2019 Projection are related to Ameren Illinois’ distribution function and should be recorded to distribution, and therefore should not be included in computing the ATRR.<sup>31</sup> Southwestern further alleges that similar facilities projected to be installed in 2017 and 2018 recorded as General and Intangible also serve a distribution function.<sup>32</sup> Southwestern proposes specific account numbers to which these facilities should be recorded and avers that the Commission should investigate these facilities on a plant-by-plant and case-by-case basis to determine the correct accounting of these facilities.<sup>33</sup> Similarly, Southwestern claims that depreciation expenses associated with General and Intangible Plant should be excluded from the calculation of the ATRR.<sup>34</sup>

24. Southwestern also states that Ameren Illinois’ recording of software to Account 303 (Miscellaneous Intangible Plant) is incorrect. Southwestern argues that this software is related to Ameren Illinois’ retail or distribution business, and it should be recorded as distribution facilities and not to Account 303. Southwestern states that Account 303 provides for recording of “cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account.”<sup>35</sup> Southwestern argues that software is not “intangible” and therefore these items should be recorded to a distribution account, such as Account 370. Southwestern further argues that, if the software is not related to

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<sup>30</sup> *Enbridge Pipelines (KPC)*, 102 FERC ¶ 61,310, at PP 5, 68 (2003).

<sup>31</sup> 2019 Formal Challenge at 10, Attachment 4.

<sup>32</sup> *Id.* at 10-11, Attachments 5, 6.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *Id.* at 29.

<sup>35</sup> 2019 Formal Challenge at 12 (citing 18 C.F.R. pt. 101, Account 303 (2019)).

metering and billing, Account 383 (Computer Software) would be appropriate as Account 383 is the only account where “Software licenses” and not just “Licenses” are mentioned.<sup>36</sup>

25. Ameren responds that almost all of Southwestern’s proposed adjustments involve software, and that Ameren Illinois has appropriately recorded all of these items to Account 303. Ameren submits that the Commission already has found that “software costs are considered intangible plant and properly includable in Account 303, Miscellaneous Intangible Plant.”<sup>37</sup> In response to Southwestern’s contention that such software could instead be recorded to Account 383, Ameren notes, for example, that Account 383 is a Regional Transmission and Market Operation Plant account, not a distribution account, and, because Ameren Illinois is not a Regional Transmission Organization, Ameren Illinois should not record any costs to this account, including the cost of the software Southwestern has identified. Similarly, Ameren rejects Southwestern’s alternative accounting suggestion to book some software intangible items to Account 370 (Meters) because, according to Ameren, Account 370 refers to various metering equipment but does not include software. Ameren contends that recording software to Account 370 would either require such software to be depreciated at the existing Account 370 depreciation rate or require a change in Ameren Illinois’ depreciation rates; otherwise, such software would not be appropriately amortized. Ameren argues that Southwestern suggests these alternative accounts in an attempt to move the costs of this intangible plant out of Ameren Illinois’ ATRR, in contravention of proper accounting and the filed formula rate.<sup>38</sup>

26. Ameren explains that a second set category of challenged expenses includes a blanket work order that is appropriately recorded to a general account rather than the alternative account Southwestern suggests. Ameren states that the blanket work order is for procurement of General Plant items such as computers, tools, and telecommunications equipment that support all of Ameren Illinois’ functions, not just distribution and, therefore, Southwestern’s suggestion that these general items should be recorded to Account No. 361 (Structures and Improvements), for the cost of land and land rights and the cost of structures and improvements they claim are used in connection with distribution operations, is yet another attempt by Southwestern to move items out of General Plant. Likewise, Ameren argues that Southwestern also attempts to move blanket work order amounts for tools and communications equipment, which, according

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<sup>36</sup> *Id.*

<sup>37</sup> Ameren Response at 12 (citing 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at P 44).

<sup>38</sup> *Id.* at 13.

to Ameren, are appropriately recorded to General Plant Accounts 394 (Tools, Shop and Garage Equipment) and 397 (Communication Equipment), to Account 370 because their labels indicate that they are associated with advanced metering. Ameren submits that the description of Account 370 does not indicate that all equipment associated with metering should be recorded in Account 370.

27. Ameren argues that, while Southwestern has selected a few general plant items from information requests that it believes should be recorded in distribution accounts, Southwestern has remained silent on certain items that specifically reference communication equipment related to the transmission system. Therefore, Ameren alleges that Southwestern continues its previous cherry-picking, results-oriented practice of trying to functionalize distribution items out of the General and Intangible Plant accounts before allocation between transmission and distribution, while leaving items that are entirely transmission in General and Intangible Plant such that roughly only 10% of the costs of entirely transmission-related items are allocated to transmission.<sup>39</sup>

28. In response, Southwestern argues that not all software expenses should be charged to Account 303, as Account 303 is intended to “include the cost of patent rights, licenses, privileges and other intangible property necessary or valuable in the conduct of utility operations and *not specifically chargeable to any other account.*”<sup>40</sup> Southwestern also argues that the Commission found, in the 2016 Formal Challenge Order, that “*some* software costs are considered intangible plant and properly includable in Account 303, Miscellaneous Intangible Plant.”<sup>41</sup> In addition, Southwestern asserts that, while Ameren describes the blanket work order as general plant related to all of Ameren Illinois’ functions and not just distribution, this response fails to discuss why Ameren Illinois designated it as “Dist.SVCS.GENERAL.”<sup>42</sup> With respect to “MAP AMI Field Network” and “MAP AMI Field Management,” Southwestern contends that Ameren does not deny Southwestern’s assertion that its advanced metering is related to a distribution function only.

29. In its answer, Ameren states that Account 370 refers to various metering equipment hardware but does not include software. Ameren explains that the software in question is not used for measuring the electricity delivered to customers, as Southwestern

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<sup>39</sup> *Id.* at 14.

<sup>40</sup> Southwestern Answer at 8 (citing 18 C.F.R. pt. 101, Account 303 (2019)) (emphasis added by Southwestern).

<sup>41</sup> *Id.* at 8-9 (citing 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at PP 43-44) (emphasis added).

<sup>42</sup> *Id.* at 9-10.

appears to assume.<sup>43</sup> Instead, Ameren states, the software is used as part of the communication network deployed to gather data from the actual meters that are measuring the electricity delivered to customers.

**b. Commission Determination**

30. As in the 2018 Formal Challenge Order, we again find Ameren Illinois' recording of the challenged items to be appropriate.<sup>44</sup> While we agree that not all software costs are required to be recorded to Account 303, we find Ameren Illinois' recording of these items, such as software licenses and purchases, to Account 303 to be consistent with the Uniform System of Accounts, as they are not specifically chargeable to any other account. While Southwestern has proposed Accounts 370, 361, and 383 for these intangible assets based on the account titles, we do not find that, based on Ameren's description, these assets fall within the parameters of those accounts such that we would require Ameren Illinois to adjust accounting for these items. Account 370 relates specifically to meter devices and other associated tangible assets and the installation costs associated with them. Account 361 relates to the cost in place of structures and improvements used in connection with distribution operations. Account 383 relates to the cost of software used for scheduling, system planning, and market monitoring.

31. Likewise, we find Ameren's description, and recording to General Plant, of office and operating center buildings and the blanket work order to be consistent with the Uniform System of Accounts. Ameren explains that these items support all of Ameren Illinois' functions, not just distribution; thus, we find the recording of these items to General Plant to be appropriate.

32. Further, with regard to the recording of tools and communications equipment associated with advanced metering projects, we agree with Ameren that the description of Account 370 does not indicate that all equipment associated with metering should be recorded in Account 370. For example, we find that Account 370 specifically provides for the inclusion of "only those meters used to record energy delivery to customers."<sup>45</sup> We find that Southwestern has not demonstrated that the items challenged are strictly for these purposes. Therefore, we find that the recording of tools and communications equipment used on advanced meter projects may be recorded in Accounts 394 and 397, provided the items are not primarily used for the installation of meters or devices contemplated in Account 370.

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<sup>43</sup> Ameren Answer at 5.

<sup>44</sup> See 2018 Formal Challenge Order, 169 FERC ¶ 61,147 at PP 32-36.

<sup>45</sup> 18 C.F.R. pt. 101, Account 370 (2019).

33. Based on the information provided in the record, we find no cause to direct Ameren Illinois to adjust its recording of the disputed costs related to General and Intangible Plant. Because we do not find that such adjustments are required, we also do not find that adjustments to the related depreciation expenses are required. Thus, we deny the 2019 Formal Challenge as it relates to these items.

34. We note that Southwestern contends that the Commission should investigate these facilities on a plant-by-plant and case-by-case basis to determine whether the accounting is correct. To the extent Southwestern is urging the Commission to engage in proceedings outside this formal challenge, we find such a request to be outside the scope of this proceeding.

#### **4. Land Held for Future Use**

##### **a. 2019 Formal Challenge and Answers**

35. Southwestern argues that Ameren Illinois does not have any plan as to when it will use some of its land held for future use facilities as one site “is not being used” and many other sites are described as “timing unknown” or “TBD.”<sup>46</sup> Southwestern contends that Account 105 (Electric Plant Held for Future Use) of the Uniform System of Accounts requires that the costs of only “land and land rights owned and held for future use in electric service *under a plan for such use*” be recovered from ratepayers.<sup>47</sup> Southwestern notes that, in Order No. 420,<sup>48</sup> while the Commission loosened the requirement that land held for future use have a “definite plan,” it retained the requirement that the land held for future use be held “under a plan.”<sup>49</sup> Southwestern argues, however, that Ameren Illinois has no certainty at all as to if or when it may ever use some of its land. Therefore, Southwestern argues that the Commission should direct Ameren Illinois to record these items to Account 121 (Nonutility Property).

36. Southwestern contends that one site in particular is used for a 34.5 kV line that serves a distribution function. Southwestern states that Ameren Illinois acknowledges that the 34.5 kV line serves a distribution function, even though Ameren Illinois originally purchased the land to serve a transmission function, and Ameren Illinois claims that the land may still be used for transmission. However, Southwestern argues that

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<sup>46</sup> 2019 Formal Challenge at 13.

<sup>47</sup> *Id.* (emphasis added by Southwestern).

<sup>48</sup> *Accounting Treatment for Land Held for Future Utility Use and For Profits or Loss Realized Through Sale of Those Lands*, Order No. 420, 45 FPC 106, 107 (1971).

<sup>49</sup> 2019 Formal Challenge at 12-14.

Ameren Illinois provides no detail to support this claim. Southwestern asserts this is an example of Ameren Illinois shifting costs between transmission and distribution.<sup>50</sup>

37. In response, Ameren argues that Southwestern is using the same argument it made in previous formal challenges, which Ameren alleges is an attack on the filed rate that the Commission previously rejected in the 2017 Formal Challenge.<sup>51</sup> Ameren contends that the Commission no longer requires that a public utility hold lands under a “definite plan.”<sup>52</sup> Ameren states that Ameren Illinois has a plan to use these parcels for future transmission projects, and that, while Ameren Illinois acknowledges that no specified timeframe has been established for the use of these parcels, pursuant to Order No. 420, no specified timeframe is required.<sup>53</sup> With regard to the 34.5 kV line, Ameren clarifies that it has always maintained the position that it *will* be used for transmission.<sup>54</sup> Ameren states that, when property is used for a transmission and distribution purpose, the underlying land rights are recorded to transmission, and, as such, no adjustment to Ameren Illinois’ ATRR for this parcel of land held for future use is warranted.<sup>55</sup>

38. Ameren notes that, although not discussed by Southwestern in the 2019 Formal Challenge, Southwestern takes issue with \$139,192 of overhead expenses added to the Dupo Area substation recorded as land held for future use.<sup>56</sup> Ameren avers this adjustment to land held for future use was made by Ameren Illinois to correct an internal timing error “to correct the fact that overhead charges were not allocated to the property before it was placed in land held for future use, as normally occurs.”<sup>57</sup> Further, Ameren

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<sup>50</sup> *Id.* at 14.

<sup>51</sup> Ameren Response at 15 (citing 2017 Formal Challenge Order, 167 FERC ¶ 61,247 at P 43).

<sup>52</sup> *Id.* at 16 (citing Order No. 420, 45 FPC 106).

<sup>53</sup> *Id.* at 16-17.

<sup>54</sup> *Id.* at 17 (emphasis added by Ameren).

<sup>55</sup> *Id.* (citing 18 C.F.R. pt. 101, Electric Plant Instruction 14.C (2019) (“Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights of way shall be classified as transmission system. The conductors, crossarms, braces, grounds, tirewire, insulators, etc., shall be classified as transmission or distribution facilities, according to the purpose for which used.”)).

<sup>56</sup> *Id.* at 18.

<sup>57</sup> *Id.*

argues that balances in Ameren Illinois' land held for future use account appropriately include overheads as Electric Plant Instruction 4 requires:

All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto.<sup>58</sup>

Ameren asserts that the instructions do not exclude land held for future use and there is no reason that such overheads associated with a land acquisition would not be charged to the land being acquired simply because the land is land held for future use.

39. In its answer, Southwestern disputes Ameren's characterization of the 1981 decision in *Pacific Gas and Electric Company*,<sup>59</sup> in which the presiding judge discussed the requirement, as amended in Order No. 420, that utilities have a plan for development before recovering the costs of land held for future use. Southwestern contends that Ameren's response to the 2019 Informal Challenge characterized the presiding judge's ruling as the Commission terminating the requirement that a public utility have a plan for land held for future use. Southwestern argues that Ameren then used the ruling to claim that the Commission does not require the specificity or justification of the intended use of the land that Southwestern believes necessary to substantiate the recovery.<sup>60</sup> Southwestern notes that the plain language of Account 105 directs that public utilities have a plan in place for land held for future use recorded to Account 105, requiring that the costs of only "land and land rights held for future use in electric service under a plan for such use" be recovered from ratepayers.<sup>61</sup> Southwestern contends that the *PG&E* proceeding did not, as Ameren alleges, conclude that the Commission changed course in Order No. 420 by declining to require that land held for future use be included in a plan.<sup>62</sup> Southwestern argues instead that, while Order No. 420 removed the requirement that a public utility have a "definite plan" for the use of land held for future use, it retained the

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<sup>58</sup> *Id.* (citing 18 C.F.R. pt. 101, Electric Plant Instruction 4.A (2019)).

<sup>59</sup> 16 FERC ¶ 63,004, at 65,020 (1981), *modified*, Opinion No. 147, 20 FERC ¶ 61,340 (1982) (*PG&E*).

<sup>60</sup> Southwestern Answer at 11.

<sup>61</sup> *Id.* (citing 18 C.F.R. pt 101, Account 105 (2019)).

<sup>62</sup> *Id.* at 12.

requirement that land held for future use be held “under a plan” for its use.<sup>63</sup> Southwestern reiterates that, contrary to the plain language of Account 105, Ameren Illinois has not produced any plan or explanation at all for use of the land it books as land held for future use, outside of Ameren’s statement that it “will be used for future transmission projects.”<sup>64</sup> Southwestern argues that, as the presiding judge in *PG&E* stated, at some point, a public utility must not hold land indefinitely into the future and continue to earn a return on it.<sup>65</sup>

40. Southwestern submits that Ameren’s response still does not produce any plan or explanation for use of the land held for future use challenged by Southwestern. With regard to the 34.5 kV line, Southwestern states that Ameren did not disagree with Southwestern that the line serves a distribution function, and therefore, Ameren Illinois should be required to exclude this parcel.<sup>66</sup>

41. Finally, Southwestern contends that Ameren acknowledges that it records overhead charges as land held for future use despite Account 105 containing no provision for adding any overheads.<sup>67</sup> Southwestern argues that the requirements of Account 105 are mandatory, and, therefore, Ameren Illinois can book only original cost, not any associated overheads, as land held for future use.<sup>68</sup> In addition, Southwestern questions whether construction costs were assigned to land held for future use. Southwestern asserts that if Ameren Illinois is currently constructing facilities at the site, then it should be recovering Construction Work in Progress, and if there are facilities currently in operation that have been constructed at the site, the land should be placed in Plant in Service. Southwestern states that the Commission should direct Ameren Illinois to provide an accounting for the overhead assigned to other land held for future use parcels, as it argues that Ameren’s response indicates that assignment of “construction costs” to land held for future use is a normal practice for Ameren Illinois.<sup>69</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 14 (citing Ameren Response at 16).

<sup>65</sup> *Id.* at 15.

<sup>66</sup> *Id.* at 14-15.

<sup>67</sup> *Id.* at 15-16.

<sup>68</sup> *Id.*

<sup>69</sup> Southwestern Answer at 16 (citing Ameren Response at 18).



42. In its answer, Ameren states that, in the *PG&E* proceeding, the presiding judge found that all three properties were properly included in land held for future use and this conclusion was reached even though two of the three sites did not have associated timeframes for when such sites would be used.<sup>70</sup> In addition, Ameren contends that the Commission recently asserted, in the 2018 Formal Challenge Order, that “the fact that sites are not being used or subject to a deadline does not demonstrate that there is no plan for their use.”<sup>71</sup>

43. With regard to Southwestern’s argument regarding the inclusion of overhead costs, Ameren contends that Southwestern failed to provide any justification or basis for its proposed adjustment in the 2019 Formal Challenge and that Southwestern newly introduces its argument in its answer. Ameren submits that only in Southwestern’s answer does Southwestern reveal its belief that the plain language of Account 105 prohibits Ameren from including any overhead costs when recording land as land held for future use. Ameren argues that the Commission should reject the newly introduced arguments as inefficient and inconsistent with sound administrative procedure and Ameren Illinois’ protocols. Ameren states that while its reliance on Electric Plant Instruction 4 is justified, Ameren believes that Electric Plant Instruction 7(I) is more on point with respect to land held for future use.<sup>72</sup> Ameren states that Electric Plant Instruction 7(I) contains a comprehensive list of overhead costs that are properly included in the original cost for land and land rights recorded to Account 105. Ameren contends that the Dupou Area substation site has been recorded to Account 105 because the land has not yet been utilized for public service. Ameren argues that therefore, in accordance with Electric Plant Instruction 7(I), it is appropriate and consistent with the Uniform System of Accounts for Ameren Illinois to include all of the overhead costs that Ameren Illinois has included in the original cost of the Dupou Area substation site.<sup>73</sup>

**b. Commission Determination**

44. We deny the 2019 Formal Challenge as it relates to land held for future use. The Commission previously has found that land held for future use that is for transmission is recoverable under Attachment O-AIC.<sup>74</sup> The Commission stated that it “does not require

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<sup>70</sup> Ameren Answer at 7.

<sup>71</sup> *Id.* (citing 2018 Formal Challenge Order, 169 FERC ¶ 61,147 at P 42).

<sup>72</sup> *Id.* at 8.

<sup>73</sup> *Id.* at 9.

<sup>74</sup> 2017 Formal Challenge Order, 167 FERC ¶ 61,247 at P 43. *See also* 2017 Formal Challenge Order on Rehearing, 169 FERC ¶ 61,042 at PP 35-36.

utilities to explain the precise need or to provide citations to transmission studies to support the inclusion of purchased property in the land held for future use account.”<sup>75</sup> Although Southwestern notes that certain of Ameren Illinois’ land held for future use facilities are labeled “is not being used,” “timing unknown,” or “TBD,” the fact that sites are not being used or subject to a deadline does not demonstrate that there is no plan for their use. Further, with respect to Southwestern’s argument that Ameren does not produce any plan or explanation for use of the land held for future use challenged by Southwestern, we disagree. We find that Ameren Illinois has provided “a quantum of evidence” that it has a plan for land held for future use.<sup>76</sup> For example, with respect to the contested 34.5 kV line included in land held for future use site, we agree with Ameren’s explanation that it is appropriate to classify this property as used for transmission even if a smaller segment of the line may serve a distribution function. Electric Plant Instruction 14 (Transmission and Distribution Plant), part C states that, “[w]here poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights of way shall be classified as transmission system.”<sup>77</sup>

45. We deny the 2019 Formal Challenge as it relates to overhead charges added to the Dupo Area substation. We reiterate that a formal challenge should clearly identify and explain how the action or inaction allegedly violates the filed rate or protocols.<sup>78</sup> While Southwestern includes the challenged expense as part of its proposed ATRR reduction under Attachment 7, Southwestern does not provide any support for its claim that such overhead expenses should be disallowed. We agree with Ameren that Southwestern’s answer on this issue introduces a new argument that should have been originally included in the 2019 Formal Challenge, and as such, we reject it here.

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<sup>75</sup> 2017 Formal Challenge Order, 167 FERC ¶ 61,247 at P 43 (citing *Pac. Gas & Elec. Co.*, 16 FERC at 65,020).

<sup>76</sup> See 2017 Formal Challenge Order on Rehearing, 169 FERC ¶ 61,042 at P 36; Ameren Response, Exhibit I at 5-6.

<sup>77</sup> 18 C.F.R. pt. 101, Electric Plant Instruction 14, part C (2019).

<sup>78</sup> See MISO, FERC Electric Tariff, Attachment O, Rate Formulae, 40, AIC Annual Rate Calculation and True-Up Procedures § IV.C(1) (32.0.0): “A Formal Challenge shall: (a) Clearly identify the action or inaction which is alleged to violate the filed rate formula or protocols; (b) Explain how the action or inaction violates the filed rate formula or protocols. . .”

## 5. Prepayments Adjustment (2017 True-Up Only)

### a. 2019 Formal Challenge and Answers

46. Southwestern alleges that Ameren Illinois should not have recorded Prepaid Renewable Energy Credits (REC) in Account 165 (Prepayments). Southwestern states that the REC amount is related to Ameren Illinois' purchase of RECs from power generators, and thus, this payment should be recorded to Account 557 (Other Expenses) as a generation-related expense and not recovered from transmission customers.<sup>79</sup> Southwestern notes that Account 557 expenses are related to "any production expenses including expenses incurred directly in connection with the purchase of electricity, which are not specifically provided for in other production expense accounts."<sup>80</sup>

47. In response, Ameren states that Southwestern's proposed adjustments to prepayments are unwarranted and contain multiple errors. Ameren states that Southwestern incorrectly used the average of the four monthly amounts listed in Work Paper 5 of the 2017 True-Up, ignoring the nine months that had a zero balance and inflating the total amount Southwestern alleges was included in Attachment O-AIC. Ameren contends that Southwestern makes another error by applying the net plant allocator instead of the gross plant allocator that the approved formula requires.<sup>81</sup>

48. Ameren states that, to comply with Illinois Renewable Portfolio Standards (RPS) requirements, Ameren Illinois purchases RECs directly from counterparties who provide evidence that power has been generated by a qualifying renewable facility. Ameren explains that Ameren Illinois recognizes the REC expense evenly over the annual compliance period using a proportionate, time-based accrual method, and that to the extent that the counterparty delivers a large amount of RECs early in the compliance period, this could result in a prepayment of RECs, as payment to the counterparty is due upon receipt of RECs but the related REC expense cannot yet be recognized.<sup>82</sup> Ameren states that the prepayment will then be relieved as the REC expense is recognized over the remainder of the compliance period.<sup>83</sup>

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<sup>79</sup> 2019 Formal Challenge at 14-15.

<sup>80</sup> *Id.* at 15 (citing 18 C.F.R. pt. 101, Account 557 (2019)).

<sup>81</sup> Ameren Response at 19.

<sup>82</sup> *Id.* at 19-20.

<sup>83</sup> *Id.* at 20.

49. Ameren argues that Southwestern's assertion that this payment should be recorded as a generation expense and not recovered from transmission customers amounts to a collateral attack on the formula rate. Ameren also disagrees that the prepayment of RECs should be recorded directly as an expense to Account 557 rather than a prepayment. Ameren submits that the full amount of the prepayment related to these RECs cannot be charged as an expense to Account 557 prior to incurring the expense. Ameren agrees that the associated expense should be recorded to Account 557, and notes that Ameren Illinois does so when the expense is recognized.<sup>84</sup> Ameren argues that these prepayments, therefore, are properly recorded to Account 165 and the Commission-approved Attachment O-AIC formula rate. Finally, Ameren states that the prepayment amount used in Attachment O-AIC for the 2019 Projection does not include any amounts related to RECs and that, consequently, there should not be any adjustment to Ameren Illinois' rate base.<sup>85</sup>

50. In its answer, Southwestern argues that Ameren's response acknowledges that the prepayment related to RECs relates to Ameren Illinois' compliance with RPS, which apply to entities serving retail load. Southwestern argues that Southwestern also has expenses that are related to the direct provision of service to retail customers and members, and it should not be allocated a portion of the same expenses that are borne by Ameren Illinois simply because Ameren Illinois provides transmission service in addition to retail service. Southwestern reiterates that its proposal, that Ameren Illinois record such costs to Account 557, is appropriate.<sup>86</sup>

51. In its answer, Ameren reiterates that, when a large amount of RECs is purchased early in the compliance period, it results in a prepayment because a payment is due upon receipt of the RECs even though the related expense cannot yet be recognized. Therefore, Ameren contends that it is not appropriate for Ameren Illinois to record these prepayments in Account 557 as an expense until the expense is realized; to do so would violate standard accounting principles.<sup>87</sup>

**b. Commission Determination**

52. With respect to the costs associated with RECs, we note that the Commission has not provided specific accounting guidance for the purchase, generation, and use of RECs.

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 21.

<sup>86</sup> Southwestern Answer at 16-17 (citing 18 C.F.R. pt. 101, Account 557 (2019)).

<sup>87</sup> Ameren Answer at 9-10 (citing 2017 Formal Challenge Order, 167 FERC ¶ 61,247 at P 31).

However, in Order No. 552, the Commission provided detailed accounting guidance for emission allowances related to sulfur dioxide following Title IV of the Clean Air Act Amendments of 1990, which are analogous to the operation and use of RECs.<sup>88</sup> Order No. 552 concluded that emission allowances are appropriately classified as inventoriable items and established new inventory and expense accounts to record the allowances. Here, we find it appropriate to remain consistent with the accounting construct established in Order No. 552 for emission allowances when considering the costs for similar items such as RECs. Accordingly, we find that RECs are more appropriately classified as inventory, rather than a prepaid expense in Account 165 as Ameren proposes. Account 158.1 (Allowance Inventory), established under Order No. 552, states that this account shall include the cost of allowances owned by the utility and we find that RECs fall within the meaning and intent of the account.<sup>89</sup> As such, we clarify that Account 158.1 is the most appropriate account to record RECs that are purchased or generated. Additionally, the instructions to Account 158.1 provide for allowances to be expensed to Account 509 as allowances are used.<sup>90</sup> Therefore, we direct Ameren Illinois to reclassify the amounts related to RECs from Account 165 to Account 158.1 and to expense these amounts through Account 509 as they are utilized.

53. To the extent that Southwestern challenges the allocation factors of properly-recorded expenses, we reject Southwestern's argument as a collateral attack on Ameren Illinois' Commission-approved formula rate.

## **6. Exclusion of Certain Intercompany Allocated Expenses**

### **a. Regulatory-Related Expenses**

#### **i. 2019 Formal Challenge and Answers**

54. Southwestern contends that expenses that include "regulatory" or "reg" in the name that Ameren Illinois recorded to Operations and Maintenance accounts, specifically Accounts 560 (Operation Supervision and Engineering), 566 (Miscellaneous Transmission Expenses), 920 (Administrative and General Salaries), 921 (Office Supplies and Expenses), 923 (Outside Services Employed), and 930 (Miscellaneous General Expenses), should instead be recorded to Account 928 (Regulatory Commission

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<sup>88</sup> See *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. and Regs. ¶ 30,967 (1993) (cross-referenced at 62 FERC ¶ 61,299).

<sup>89</sup> See 18 C.F.R. pt. 101, Account 158.1 (2019).

<sup>90</sup> See 18 C.F.R. pt. 101, General Instruction 21 (2019).

Expenses), and excluded from the ATRR.<sup>91</sup> Southwestern states that while Ameren's response to the 2019 Informal Challenge states that Ameren's transmission employees are involved in regulatory issues and the development and implementation of regulatory policy, Ameren fails to explain what these issues or policies are. Further, Southwestern states that Ameren's response to the 2019 Informal Challenge states that some of the expenses are related to informal and formal challenges that are properly recorded to Account 566. Southwestern argues that regulatory expenses related only to Attachment O Updates can be included in the ATRR.<sup>92</sup>

55. In addition, Southwestern claims that regulatory expenses recorded to Account 923, i.e., legal federal regulatory services, legal state regulatory services, legal transactional services, regulatory policy and planning, and regulatory rate case strategy, should not be recoverable because Attachment O specifically computes the regulatory expenses that should be recovered through transmission rates.<sup>93</sup> Specifically, with regard to legal transactional services, Southwestern states that Ameren Illinois responded to the 2019 Informal Challenge by stating that those expenses capture "all activities performed by the legal department to provide transaction support to include certain [mergers and acquisitions], real estate, credit [and] collection and other services."<sup>94</sup> With respect to these expenses, Southwestern states that mergers and acquisitions expenses are generally not allowed by the Commission; real estate expense should be capitalized as Plant in Service; and credit and collection expense are related to retail business. With regard to regulatory rate case strategy expenses, Southwestern asserts that Ameren Illinois responded to the 2019 Informal Challenge by stating that those expenses are related to outside consultants that assist with Ameren Illinois' Peak Time Reward Program. Southwestern argues, however, that this peak time reward is provided only to Ameren Illinois' retail customers and that Ameren did not provide any examples of what transmission service was provided through that expense. Southwestern contends that this is an example of an amount being paid to a retail customer as a reward for reducing peak time load and then having that amount allocated to transmission customers.<sup>95</sup>

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<sup>91</sup> 2019 Formal Challenge at 16.

<sup>92</sup> *Id.* at 18.

<sup>93</sup> *Id.* at 25.

<sup>94</sup> *Id.* at 26.

<sup>95</sup> *Id.* at 25-26.

56. Ameren contends that Southwestern's arguments as to regulatory-related expenses are incorrect and directly contradicted by the 2016 Formal Challenge Order.<sup>96</sup> Ameren submits that Account 928 is not the appropriate account for all regulatory expenses, as that account is intended only for regulatory costs incurred in connection with formal cases before regulatory commissions or other regulatory bodies. Ameren disputes Southwestern's argument that regulatory policy and planning activity should be excluded from the ATRR. Ameren states that all of the expenses in Account 566 and recorded as regulatory policy and planning pertain to services provided to or performed for Ameren Illinois' transmission business, not Ameren Illinois' distribution business.<sup>97</sup> Ameren further submits that the Ameren Services employees in the Transmission Financial and Regulatory group are involved in transmission related regulatory issues and the development and implementation of transmission regulatory policy. Ameren states that some of these employees use the regulatory policy and planning activity code to account for the time they spend on a variety of tasks related to transmission policy, regulation, rates, and billing. Ameren argues that these are all regulatory-related issues and are properly recorded in Account 566.<sup>98</sup>

57. Ameren argues that Southwestern's assertion that only regulatory expenses related to Attachment O updates are allowed to be included in Attachment O is not correct. Ameren notes that a variety of regulatory expenses may be included, according to Note I to Attachment O-AIC.<sup>99</sup>

58. Ameren notes that the other significant category of expenses identified by Southwestern to be removed from the ATRR that contain the word "regulation" are Administrative and General expenses related to internal federal or state legal activities, which are not necessarily incurred in relation to formal docketed cases. For example, Ameren explains that its legal department is, and has been, involved in real estate transactions and rights-of-way acquisition for transmission lines and spends time on federal regulatory matters that may not be related to a specific case or docket. Ameren contends that, since these expenses are not related to particular cases or dockets, they should not be recorded to Account 928. Therefore, Ameren states that the Commission

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<sup>96</sup> Ameren Response at 24 (citing 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at P 72).

<sup>97</sup> *Id.* at 25.

<sup>98</sup> *Id.* at 26.

<sup>99</sup> *Id.* at 27. Note I to Attachment O-AIC allows for Regulatory Commission expenses directly related to transmission service, ISO filings, or transmission siting itemized at 351.h to be included as part of Ameren Illinois' ATRR.

should make the same finding here that it did in the 2016 Formal Challenge Order and reject Southwestern's proposed adjustments to regulatory expenses.<sup>100</sup>

59. Ameren states that regulatory rate case strategy expenses are related to outside consultants that assist in Ameren Illinois' Peak Time Reward Program. Ameren explains that Ameren Illinois worked with MISO to set up this program to reduce load on the transmission system by rewarding customers to reduce usage when requested, which lowers the loading on the transmission system at peak times. Ameren acknowledges that the Peak Time Reward Program is only offered to retail customers, but contends that all users of the transmission system benefit from this program as its purpose is to alleviate system conditions that might otherwise require costly additions to address. Ameren further states that, as an Administrative and General cost, only 10% of this expense is allocated to the ATRR and retail customers are 80% of the load in Ameren Illinois, meaning that 98% of the expense of setting up the program is being paid by retail customers. Ameren argues that it is therefore appropriate to include its costs in the ATRR.<sup>101</sup>

60. In its answer, Southwestern alleges that Ameren's response does not provide any reference to the Uniform System of Accounts in support of its assertions with respect to regulatory-related expenses. Southwestern argues there are three primary problems with Ameren Illinois' recording of regulatory expenses to Operations and Maintenance accounts. First, the Operations and Maintenance accounts do not reference regulatory expenses in their descriptions. Second, the formula rate reinforces the treatment proposed by Southwestern because it assumes that all regulatory expenses have been included in Account 928 and provides a specific treatment of regulatory expenses in that it requires including all transmission-related regulatory expenses in Line 5a of page 3 of Attachment O. Third, according to Southwestern, Ameren Illinois is under-reporting its regulatory expenses recorded to Account 928. Southwestern notes that, while Ameren Illinois' FERC Form No. 1 indicates that Ameren Illinois recorded \$1.976 million to Account 928, Southwestern identified seven transmission-owners in MISO that had their respective Account 928 balances in a range of \$1.001 million and \$19.003 million (for 2017). Southwestern notes that, after eliminating two utilities that are not similarly situated and the extreme outlier, the range of these other utilities is between \$3.8 million to \$4.8 million, which is a disparity from what Ameren Illinois recorded in 2017.<sup>102</sup>

61. With regard to regulatory expenses, Southwestern contends that Ameren's response ignores Southwestern's concern that the Attachment O rate formula was

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<sup>100</sup> Ameren Response at 27-28.

<sup>101</sup> *Id.* at 43-44.

<sup>102</sup> Southwestern Answer at 19-21.



designed to recover specific regulatory commission expenses and that Ameren Illinois' recording of regulatory expenses to Account 923 bypasses this design.<sup>103</sup> Southwestern explains that Attachment O's two-step mechanism, where Account 928 expenses are subtracted and Account 928 expenses specific to transmission are added, ensures that only regulatory expenses directly related to transmission are to be included in the rate formula and recovered from transmission customers. Southwestern contends that Ameren Illinois bypasses this formula by recording a number of regulatory-related expenses to Account 923 rather than Account 928.<sup>104</sup>

62. In response to Ameren's claim that regulatory policy and planning expenses incurred by Ameren Services employees performing regulatory-related work is properly accounted for, Southwestern contends that Ameren Illinois violates the accounting instructions of Account 923 in two ways. First, Southwestern argues that Ameren Illinois books costs to Account 923 that can, and should, be recorded to other accounts. Second, Southwestern argues that Ameren concedes that Ameren Illinois books the costs of Ameren Services employees to Account 923 because Ameren's response demonstrates that such expenses are "all regulatory-related work" performed by "Ameren [Services] employees."<sup>105</sup> Southwestern states that it has the same concerns with legal state regulatory services costs. Southwestern contends that, in previous proceedings, Ameren has described legal state regulatory services costs as activities performed by the legal department to provide state regulatory services to Missouri and Illinois to include representation of the Company before the Missouri and Illinois state commissions in rate matters.<sup>106</sup> Southwestern contends that, if these costs were appropriately recorded to Account 928, these costs for state-specific proceedings would be removed by the Attachment O formula rate and examined as to whether they should be added back.<sup>107</sup>

63. With regard to Ameren's answer concerning recovery of expenses related to Ameren Illinois' Peak Time Reward Program, Southwestern argues that, to the extent that wholesale transmission customers benefit because of load reductions by retail customers, Ameren Illinois should also pay the wholesale customers if they reduce their loads from which retail customers also benefit. Further, Southwestern contends that it is improper to book "outside consultants" to Account 923 because Account 923 expenses are intended for expenses that "are not applicable to a particular operating function or to other

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<sup>103</sup> *Id.* at 29-30.

<sup>104</sup> *Id.* at 30-31.

<sup>105</sup> *Id.* at 31-32 (citing Ameren Response at 26).

<sup>106</sup> *Id.* at 32.

<sup>107</sup> *Id.*

accounts.”<sup>108</sup> Southwestern submits that Ameren Illinois should therefore book these costs to a retail or distribution account.<sup>109</sup>

64. Southwestern disagrees with Ameren’s argument that Account 928 is to be used for expenses related to formal cases before regulatory bodies, and not every expense related to regulatory activity. Southwestern argues that Account 928 does not require that a public utility be a party to a formal case before a regulatory commission, only that the costs are incurred in connection with formal cases initiated by a regulatory commission.<sup>110</sup> Southwestern notes that Ameren has acknowledged that an Audit Report in Docket No. FA13-1-000 found that charges recorded to Account 923 related to monitoring state regulatory matters should have instead been recorded to Account 928 and excluded from the ATRR because they were not transmission related. Southwestern argues that this demonstrates that even the monitoring of developments before regulatory bodies, without becoming a party to a formal proceeding, is required to be recorded to Account 928.<sup>111</sup>

65. In its answer, Ameren contends that Southwestern is incorrect in its position that all allocated regulatory expenses must be recorded to Account 928. Ameren submits that Account 928 is specifically for expenses incurred by the utility in connection with formal cases before regulatory commissions, or in cases in which such body is a party. Ameren argues that Account 928 does not state that any and all costs associated with regulation are to be included, nor does it state that Account 928 is to include expenses associated with transmission policy development that may never manifest itself in a formal case. Ameren asserts that Account 566 provides for other transmission expenses not provided for elsewhere.<sup>112</sup>

66. Ameren explains that the majority of the costs recorded to Account 566 with the regulatory policy and planning activity code are primarily Ameren Services transmission employee payroll charges and travel expenses. Ameren states that the payroll charges of a couple of employees with the title Transmission Policy Specialist that perform a host of activities that are generally related to regulation, but not specifically tied to formal cases before a regulatory commission, are also included. Ameren states that certain Ameren Services transmission employees have traditionally not recorded rate related work to

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<sup>108</sup> *Id.* at 33-34.

<sup>109</sup> *Id.* at 34.

<sup>110</sup> *Id.* at 32-33.

<sup>111</sup> *Id.* at 33.

<sup>112</sup> Ameren Answer at 15.

Account 928, in part because it is not known whether a formal proceeding will occur when their work is performed.<sup>113</sup> Ameren notes that, in the 2017 Formal Challenge Order on Rehearing, the Commission agreed with Ameren that not all regulatory expenses need to be recorded to Account 928, but directed Ameren Illinois to provide in a compliance filing a summary of any changes in accounting to: (1) record expenses associated with formal challenges and other formal cases before a regulatory body in Account 928; and (2) exclude internal employee regulatory policy and planning costs from Account 923.<sup>114</sup> Ameren states that, in response to the 2017 Formal Challenge Order, Ameren Illinois agreed to employ accounting procedures to book to Account 928 regulatory policy and planning and legal state regulatory services expenses (except pay of regular employees only incidentally engaged in such work) incurred in connection with formal cases before regulatory commissions or other regulatory bodies, or other cases in which such a regulatory body is a party. Ameren states that Ameren Illinois will show the costs associated with such formal cases in workpapers included in future true-up calculations.<sup>115</sup>

67. Ameren states that Southwestern's example of regulatory policy and planning expenses being recorded to Account 923 is inappropriate because that reference was in the context of expenses recorded to Account 566. Ameren explains that transmission employees use the regulatory policy and planning activity code to account for the time they spend on a variety of tasks related to transmission policy, regulation, rates, and billing, including managing the Commission-jurisdictional rate process, calculating the transmission revenue requirement, and managing the stakeholder process. Ameren contends that these are clearly transmission-related expenses.<sup>116</sup> Ameren reiterates that it has never conceded that it books the cost of Ameren employees to Account 923. Ameren argues that Southwestern has incorrectly and inappropriately extrapolated arguments made in the context of Account 566 to arguments regarding Account 923.

68. With regard to Southwestern's argument concerning legal state regulatory services expenses, Ameren contends that it has explained that the types of costs recorded in Account 923 using the legal state regulatory services activity code are for outside legal

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<sup>113</sup> *Id.* at 16.

<sup>114</sup> *Id.* at 16-17 (citing 2017 Formal Challenge Order on Rehearing, 169 FERC ¶ 61,042 at P 30).

<sup>115</sup> *Id.* at 17.

<sup>116</sup> *Id.* at 26.

services not related to regulatory dockets and include municipal tax and circuit court case matters.<sup>117</sup>

69. In response to Southwestern's argument regarding the audit in Docket No. FA13-1-000, Ameren contends that the audit findings were in the context of Ameren Illinois having included costs for an external consultant for services rendered relating to distribution and specifically for monitoring proceedings at the Illinois Commerce Commission (Illinois Commission).<sup>118</sup> Ameren acknowledges that Ameren Illinois determined that the expenses should have been recorded to Account 928, but argues that the audit report did not find that any and all monitoring of developments before regulatory bodies needs to be recorded to Account 928.<sup>119</sup>

70. With regard to Regulatory Rate Case Strategy expense, Ameren argues that recording the expense of this program to Account 923 is entirely appropriate as it is not solely applicable to a particular operating function.<sup>120</sup>

## ii. Commission Determination

71. We grant in part, and deny in part, the 2019 Formal Challenge as to items that Ameren Illinois captures under regulatory policy and planning and records to Account 566. While Account 566, among other things, includes "other transmission expenses not provided for elsewhere,"<sup>121</sup> expenses associated with responding to and defense against formal challenges and expenses incurred in connection with other formal cases before a regulatory body would fall within the instructions of Account 928, and those expenses should therefore be recorded to Account 928. Therefore, we grant the 2019 Formal Challenge in part, and, as in the 2018 Formal Challenge Order, direct Ameren Illinois to submit a compliance filing, within 60 days of the date of this order, to provide a summary of any changes in accounting to record expenses associated with formal challenges and other formal cases before a regulatory body in Account 928. Ameren Illinois must also

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<sup>117</sup> *Id.* at 27-28

<sup>118</sup> *Id.* at 28-29 (citing Southwestern Answer at 33).

<sup>119</sup> *Id.* at 29.

<sup>120</sup> *Id.* at 29-30.

<sup>121</sup> *See* 18 C.F.R. pt. 101, Account 566 (2019).

reflect any necessary changes in accounting in the annual true-up in accordance with the formula rate protocols.<sup>122</sup>

72. With regard to the regulatory category of costs (i.e., legal federal regulatory services, legal state regulatory services, legal transactional services, and regulatory policy and planning) recorded in Account 923, we are persuaded by Ameren's response on this issue. We therefore deny the 2019 Formal Challenge as it relates to the exclusion of the above costs from Account 923.

73. For the other challenged expenses, Southwestern has not explained how the recording of the items is improper beyond stating that the items include "regulatory" or "reg" in their names, and then arguing that all regulatory expenses are to be recorded to Account 928. We find that Southwestern has not sufficiently explained how this "violates the filed rate formula or protocols" as required by the formal challenge procedures under the protocols,<sup>123</sup> and thus we deny the 2019 Formal Challenge as it relates to these expenses.

74. We are also not persuaded by Southwestern's argument that all regulatory expenses are to be recorded in Account 928. The instructions to Account 928 specifically point to expenses "in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party . . . ."<sup>124</sup> Southwestern has not demonstrated that the expenses it identified in this proceeding are connected to formal cases before regulatory commissions or other regulatory bodies. Similarly, while Southwestern argues that Ameren Illinois booked significantly less regulatory expenses in Account 928 than other MISO transmission owners, a side-by-side comparison of expenses each transmission owner recorded to Account 928 does not demonstrate that Ameren Illinois is improperly accounting for such costs. Nevertheless, we reiterate our finding above that Ameren Illinois should be booking expenses in connection with formal cases before regulatory commissions to Account 928 and have directed Ameren Illinois to make changes in its accounting as necessary.

75. As the Commission discussed in the 2016 Formal Challenge order, the audit report in Docket No. FA13-1-000 only required Ameren Illinois to move certain costs paid to an external consultant from Account 923 to Account 928.<sup>125</sup> We disagree with

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<sup>122</sup> 2017 Formal Challenge Order on Rehearing, 169 FERC ¶ 61,042 at P 30.

<sup>123</sup> See MISO Tariff, Attachment O-AIC § IV.

<sup>124</sup> See 18 C.F.R. Part 101, Account 928 (2019).

<sup>125</sup> 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at P 72. See Audit Report in Docket No. FA13-1-000, p. 27-28 (Apr. 14, 2015).

Southwestern that the audit report in Docket No. FA13-1-000 supports its position. The audit report stated that audit staff believed that Ameren Illinois should not have included, in billings to its wholesale transmission customers, costs paid to an external consultant for services rendered relating to its distribution services. We agree with Ameren that the audit report did not make a broader finding that any and all monitoring of developments before regulatory bodies should be recorded to Account 928.

76. Further, we reject Southwestern's contention that Ameren conceded that Ameren Illinois recorded internal employee costs to Account 923. Southwestern misrepresented Ameren's response by quoting two separate statements by Ameren out of context.<sup>126</sup> In fact, Ameren's statement was that "[m]ost employees that perform services for Ameren Illinois' transmission business are [Ameren] employees."<sup>127</sup> Read in context with the rest of the paragraph, this statement by Ameren is in reference to Southwestern's challenge to Ameren Illinois' recording of regulatory expenses to Account 566, not Account 923. At no point does Ameren concede that Ameren Illinois has recorded internal employee costs to Account 923.<sup>128</sup>

77. Finally, with regard to costs Ameren Illinois recorded in Account 923 to set up its Peak Time Reward Program, Southwestern claims that the peak time reward is provided only to Ameren Illinois' retail customers and the associated cost should be only recorded to a "retail or distribution account." Conversely, Ameren explains the costs support transmission system operations because the program reduces load on the transmission system by rewarding customers to reduce usage when requested, which lowers the loading on the transmission system at peak times. We note that Account 923 includes the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function or to other accounts. Based on the existing record, we are not persuaded that the specific costs at issue here are general costs and not applicable to a particular operating function, as required by Account 923, and will require Ameren Illinois to provide more information to support its proposed accounting for these costs to allow us to resolve this issue. As such, we direct Ameren Illinois to submit a compliance filing, within 60 days of the date of this order, providing a detailed explanation of costs associated with the Peak Time Reward Program to support that the costs are general and not applicable to a particular operating function, or to support reclassification of any portion of the costs associated with the Peak Time Reward Program to another account(s). Ameren Illinois must also provide an explanation of the relevant provisions of the MISO Tariff under which Ameren Illinois "worked with MISO to set up this program," explanation of any compensation provided to Ameren Illinois

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<sup>126</sup> See *supra* P 62.

<sup>127</sup> See Ameren Response at 26.

<sup>128</sup> See § III.B.7 for a more comprehensive discussion on Account 923.

under the MISO Tariff for load reductions produced by the Peak Time Reward Program and the Commission accounts in which any such revenue is reflected, and explanation of any other expenses or revenues associated with development and implementation of the Peak Time Reward Program and the accounts in which such expenses or revenues are reflected.

**b. Education Programs**

**i. 2019 Formal Challenge and Answers**

78. Southwestern argues that certain expenses titled “education programs” should be recorded to Account 916 (Miscellaneous Sales Expenses) because, according to Southwestern, they are related to Ameren Illinois’ retail sales functions.<sup>129</sup> Southwestern avers that, when it refers to retail sales, it means retail distribution function, and contends that Ameren does in fact sell electricity at the retail level to those retail customers who do not purchase electricity from a third party. Southwestern further contends that Ameren Illinois does not provide any education to its transmission customers or to the community members who live in the service territories of its wholesale transmission customers. Finally, Southwestern argues that Ameren Illinois’ wholesale transmission customers outlay similar expenditures on such activities in their own communities and should not be burdened with additional expenses incurred by Ameren Illinois with respect to members of the community served by its retail business.<sup>130</sup>

79. Ameren argues that, contrary to Southwestern’s assertions, Ameren Illinois’ expenses relating to “education programs” are not related to retail sales and, therefore, should not be recorded to Account 916.<sup>131</sup> Ameren cites the Illinois Commission Administrative Code and states that Ameren Illinois is prohibited from actively promoting retail energy sales.<sup>132</sup> Ameren adds that the majority of the education programs expenses was for providing education programs to all of Ameren Illinois’ customers and others in the community. Ameren concludes that all of the costs identified by Southwestern are properly recorded to transmission Operations and Maintenance or

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<sup>129</sup> 2019 Formal Challenge at 16-20. In its answer, Southwestern withdrew its challenge with respect to expenses related to Risk Management, Business Development, and Industrial Relations Counseling. Southwestern Answer at 22.

<sup>130</sup> 2019 Formal Challenge at 19-20.

<sup>131</sup> Ameren Response at 28.

<sup>132</sup> *Id.* at 31 (citing Illinois Commission, Administrative Code, Title 83, §§ 452.230(b) and 452.240).

Administrative and General accounts and are properly allocated to transmission service.<sup>133</sup>

80. In its answer, Southwestern reiterates that education programs expenses should not be recovered from transmission customers. First, Southwestern argues that Ameren does not explain the subject matter of these educational programs, where the educational programs are held, to which communities they are offered, or which retail or transmission customers have participated. Second, Southwestern submits that the provisions cited by Ameren do not support Ameren's contention that it is prohibited from providing educational programs to retail customers. Specifically, Southwestern argues that the Illinois Commission Administrative Code exempts regulated utilities from such a prohibition and therefore Ameren Illinois is not prohibited from engaging in consumer education for retail purposes and in fact could have an obligation to establish consumer education programs.<sup>134</sup> Southwestern further states that, while it originally proposed that Ameren Illinois record such costs to Account 916, Ameren Illinois could, alternatively, depending on the nature of the costs, record them to Account 908 (Customer Assistance Expenses), Account 909 (Informational and Instructional Advertising Expenses), or Account 906 (Customer Service and Informational Expense) and Account 910 (Miscellaneous Customer Service and Informational Expense). Southwestern reiterates that costs incurred to improve Ameren Illinois' public image and to promote goodwill among the community are not appropriately recoverable, and education programs expenses also fall within this category.<sup>135</sup>

81. In its answer, Ameren contends that Southwestern misinterpreted Ameren's statement about not actively promoting retail energy sales. Ameren explains that it never said that Ameren Illinois was prohibited from engaging in educational programs for retail purposes; rather, Ameren said that Ameren Illinois was prohibited from actively promoting retail energy sales.<sup>136</sup> Ameren contends that the accounts proposed by Southwestern are not appropriate for the types of educational program expenses at issue here because Accounts 908, 909, and 910 are customer service focused and Account 906 is "non-major" and thus not appropriate for Ameren Illinois' use.<sup>137</sup> Ameren states that the activity code for a given expense category is an internal code used to help track costs and to give a sense of the nature of the expenses. Ameren states that the activity code is

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<sup>133</sup> *Id.*

<sup>134</sup> Southwestern Answer at 22-23.

<sup>135</sup> *Id.* at 23.

<sup>136</sup> Ameren Answer at 18.

<sup>137</sup> *Id.* at 19.



not intended to convey the breadth of expenses included. Ameren explains that, while the activity code definition for Education Program Expenses is “[t]he expense of providing education programs to Company’s customers and others in the community,” the types of costs covered by this code include executive media training, employee education kits, and other payments to external entities for costs of education to employees through various employee communications, and, as such, the costs are appropriately recorded to Account 923.<sup>138</sup>

**ii. Commission Determination**

82. In the 2018 Formal Challenge proceeding, Ameren stated that the education programs expenses were mostly for internal employees and not customer education.<sup>139</sup> Conversely, Ameren states in its response to the 2019 Formal Challenge that the majority of education programs expenses are for providing education programs to all of Ameren Illinois’ customers and others in the community.<sup>140</sup> Then, in its answer, Ameren again modifies its explanation to state that Ameren Illinois’ education programs expenses are related to internal employee education provided by outside parties.<sup>141</sup> We find these descriptions contradictory, and the differing descriptions lead us to question whether Ameren properly recorded the education programs expenses. To the extent that these education programs expenses are related to internal employee education provided by outside parties, as described in Ameren’s answer, we agree that recording these amounts to Account 923 is appropriate. However, for expenses related to providing education programs to Ameren Illinois’ customers and others in the community, additional information or descriptions would be needed to determine the appropriate account. For instance, Account 908 is used to record customer assistance expenses, the purpose of which is to encourage safe and efficient use of the utility's service, and Account 909 is used to record expenses incurred in activities that primarily convey information as to what the utility urges or suggests customers should do in utilizing electric service to protect health and safety, to encourage environmental protection, to utilize their electric equipment safely and economically, or to conserve electric energy.<sup>142</sup> Accordingly, we grant Southwestern’s challenge on this issue and direct Ameren Illinois to submit a compliance filing, within 60 days of the date of this order, to: (1) provide a summary of the amounts recorded in Account 923 that are related to providing education programs to

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<sup>138</sup> *Id.*

<sup>139</sup> *See* 2018 Formal Challenge Order, 169 FERC ¶ 61,147 at P 59.

<sup>140</sup> *See* Ameren Response at 31.

<sup>141</sup> *See id.* at 19.

<sup>142</sup> *See* 18 C.F.R. Part 101 (2019).

Ameren Illinois' customers and others in the community and (a) explain why they are properly includible in Account 923 or (b) if they are not, include any changes in accounting to record the expenses to alternate accounts that accommodate those education programs expenses; and (2) include an explanation as to how the accounting was determined. Ameren Illinois must also reflect any necessary changes in accounting in the annual true-up in accordance with the formula rate protocols.

**c. ARES Billing**

**i. 2019 Formal Challenge and Answers**

83. Southwestern argues that expenses related to alternative retail electric suppliers (ARES) billing should be recorded to Account 910 (Miscellaneous Customer Service and Informational Expenses) because they are related to retail customer billing and other services provided to retail customers.<sup>143</sup> Southwestern states that Ameren acknowledged that ARES billing provides retail services and yet Ameren Illinois allocated 100% of such billing expenses to transmission service.<sup>144</sup> Southwestern argues that expenses related to ARES billing should be allocated to distribution functions, as ARES do not provide any service to wholesale transmission customers.<sup>145</sup>

84. Ameren asserts that, while ARES do provide electricity to retail customers, ARES also take transmission service under the MISO Tariff and are billed Commission-jurisdictional transmission charges. Additionally, Ameren notes that the "ABIL-ARES" description is used to track the time of three Ameren Services employees that perform transmission billing for Ameren Illinois, because Ameren Services performs the network integration transmission service billing for the Ameren Illinois pricing zone as an agent of MISO. Ameren asserts that the billing for this network integration transmission service is all transmission-related and no portion of it should be allocated to the distribution function, as the distribution billing for retail customers and suppliers is a separate process from transmission billing.<sup>146</sup> Ameren states that ARES billing expenses include amounts for customer enrollment, tracking, and registration, which are all activities needed to calculate and bill MISO charges and settlements. Ameren notes that the Commission previously agreed that all of these activities are transmission functions

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<sup>143</sup> 2019 Formal Challenge at 17.

<sup>144</sup> *Id.* at 20.

<sup>145</sup> *Id.*

<sup>146</sup> Ameren Response at 32-33.

and properly included in Attachment O.<sup>147</sup> Ameren avers that Southwestern's attempt to remove these expenses here is an impermissible collateral attack on the Commission's prior order.<sup>148</sup>

85. Southwestern argues that Ameren's response acknowledges that ARES activities relate to the provision of retail electric service. Southwestern contends that Ameren does not explain why these costs are recorded to transmission-related Operations and Maintenance accounts, when, according to Southwestern, they should be assigned directly to the customers for whom they provide this service. Southwestern maintains that transmission customers, other than its ARES transmission customers, should not pay ARES-related transmission expenses in addition to paying their own transmission charges.<sup>149</sup>

86. Ameren states that Southwestern's answer proffers a new argument for why ARES billing expenses should be excluded from the Ameren Illinois Attachment O-AIC ATRR. Ameren submits that, although Southwestern now accepts Ameren's response that these expenses are for transmission service, Southwestern maintains that these costs should be directly assigned to the transmission customers for whom the billing service is provided. Ameren contends that the Commission should not countenance this "moving target" strategy employed by Southwestern. Ameren argues that Southwestern should be required to identify its issues and arguments in support of these issues in the formal challenges, and any attempt to shift to a new rationale in its answer should be rejected as inefficient, contrary to proper administrative procedures, and outside the Tariff protocol process.<sup>150</sup>

## ii. Commission Determination

87. We are persuaded by Ameren's explanation that the contested ARES billing expenses are all transmission-related. Therefore, we find that ARES billing is properly included in Ameren Illinois' rates consistent with its formula.<sup>151</sup> Further, to the extent that Southwestern asserts that these expenses should be allocated by a method different from that prescribed in the formula rate, this amounts to an attack on the formula rate and

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<sup>147</sup> *Id.* at 33 (citing 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at PP 68, 71).

<sup>148</sup> *Id.*

<sup>149</sup> Southwestern Answer at 24.

<sup>150</sup> Ameren Answer at 19-20.

<sup>151</sup> *See* 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at P 71.

is thus outside the scope of the challenge procedures. Accordingly, we deny the 2019 Formal Challenge as it relates to this issue.

**d. Community Relations, Public Relations, Social Media, and Governmental Advocacy**

**i. 2019 Formal Challenge and Answers**

88. Southwestern argues that expenses entitled “community relations,” “public relations,” “social media,” and “governmental advocacy” should be recorded to Account 426.4 (Expenditures for Certain Civic, Political and Related Activities), because these expenses are related to civic, political, and related activities.<sup>152</sup> Specifically, Southwestern asserts that community relations, public relations, and social media expenses are incurred to foster better relations with members of the local communities and retail customers and should not be borne by transmission customers. Similarly, Southwestern states that government advocacy activities are designed to effect a change in laws and should not be borne by transmission customers.<sup>153</sup> In addition, Southwestern contends that Ameren Illinois’ transmission customers should not be charged with the costs of constructing, maintaining, or staffing an Ameren Illinois visitors center.<sup>154</sup> Southwestern notes that, even if Account 426.4 is not the appropriate accounting treatment for all of these goodwill and promotional expenses, they should be recorded as advertising expenses that are not recovered from transmission customers and thus excluded from recovery in the ATRR.<sup>155</sup>

89. Ameren asserts that Southwestern’s recommended accounting treatment for community relations, public relations, social media, and governmental advocacy is unfounded and inappropriate.<sup>156</sup> Ameren states that it defines community relations as the actions associated with involving Ameren Illinois in the community, for the betterment of the community and the economic well-being of Ameren Illinois, including its visitor center and public communications. Ameren defines public relations as all actions associated with Ameren Illinois working with the media. Ameren defines social media as meetings and projects involving Ameren Illinois communication using social media (e.g., Facebook, YouTube, Twitter, etc.). Ameren defines governmental advocacy as resource

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<sup>152</sup> 2019 Formal Challenge at 20-21.

<sup>153</sup> *Id.* at 21.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 22.

<sup>156</sup> Ameren Response at 34.

costs associated with monitoring and reviewing federal, state, and local environmental, safety, and health law, and regulations affecting operations. Ameren argues these definitions demonstrate that none of the expenses pertains to “civic, political, and related activities” and thus should not be recorded to Account 426.4.<sup>157</sup>

90. With respect to public relations, Ameren argues that Ameren Illinois properly records some of these expenses in Account 923, which allows for expenses related to public relations counsel.<sup>158</sup> Ameren argues that Ameren Illinois similarly recorded other public relations expenses in Account 920 (Administrative and General). Ameren notes that Southwestern made similar arguments regarding public relations expenses as part of the 2016 Formal Challenge proceeding and the Commission dismissed such arguments; thus, according to Ameren, Southwestern’s arguments here are collateral attacks on the 2016 Formal Challenge Order.<sup>159</sup>

91. In its answer, Southwestern contends that Ameren’s response shows that these expenses are not related to providing transmission service and not even distribution service but instead are designed to influence Ameren Illinois’ standing among the general public. Southwestern argues that Account 426.4 is the appropriate account for these costs because the Commission has stated that Account 426.4 is “focused on expenses related to public activity, either influencing public opinion with respect to a variety of public activities or directly influencing public officials.”<sup>160</sup> Southwestern further contends that the Commission has never established “a rigid separation between expenses that influence public opinion versus the opinion of public officials” in considering Account 426.4.<sup>161</sup> Southwestern submits that the Commission has previously stated that expenses designed to influence public opinion – including press-related activities, external affairs,

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<sup>157</sup> *Id.* at 34-35.

<sup>158</sup> *Id.* at 35 (citing 18 C.F.R. pt. 101, Account No. 923, Item 1 (2019)). Ameren notes that the Commission’s regulations state that Account 923 is to include “[f]ees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, *public relations counsel*, tax consultants, etc.” (emphasis added by Ameren).

<sup>159</sup> *Id.* (citing 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at P 32).

<sup>160</sup> Southwestern Answer at 25 (citing *Potomac-Appalachian Transmission Highline, LLC*, Opinion No. 554, 158 FERC ¶ 61,050, at P 51 (2017) (*PATH*), *order on reh’g*, Opinion No. 554-A, 170 FERC ¶ 61,050 (2020)).

<sup>161</sup> *Id.* (citing *PATH*, 158 FERC ¶ 61,050 at P 53).

and corporate communications—should be recorded to Account 426.4.<sup>162</sup> Southwestern argues that Ameren’s statement that the intent of the costs is “for the betterment of the community” without defining what “community” means demonstrates that these expenses are designed to increase goodwill among the communities that Ameren Illinois serves at retail in an attempt to influence public opinion.<sup>163</sup> Further, Southwestern contends that Ameren Illinois was engaged in extensive lobbying and was involved in a variety of regulatory approvals before state commissions during the challenged time frame, and that such expenses should be recorded to Account 426.4.<sup>164</sup> For example, Southwestern states that, on December 1, 2016, Ameren issued a press release announcing that it had succeeded in delivering legislation in Illinois that protected nuclear generation facilities. Southwestern further states that Ameren recently announced that it had acquired a to-be-constructed wind generation facility in Missouri but that such facility required Missouri Public Service Commission review and approval. Southwestern submits that expenses incurred that would influence public opinion in and surrounding regulatory proceedings are also to be recorded to Account 426.4.<sup>165</sup>

92. Southwestern takes issue with Ameren’s response that certain expenses are for the funding and staffing of Ameren Illinois’ visitors center because Ameren fails to state that this facility provides any services to wholesale transmission customers rather than to its own retail customers. Southwestern adds that, in an online search, Southwestern was unable to determine the location, hours, or even existence of any visitor center that it may fund through transmission rates. Southwestern contends that Ameren Illinois’ transmission customers should not be charged with the costs of constructing, maintaining, or staffing an Ameren Illinois visitors center.<sup>166</sup>

93. In its answer, Ameren states that, as a wire only company whose primary business purpose is to provide transmission and distribution service to its customers, it is incredulous to think that Ameren Illinois would engage in community relations, public relations, or government advocacy activities that are totally unrelated to its primary business. Ameren adds that it is equally inconceivable that the purported sole purpose of these expenditures is “an attempt to influence public opinion.”<sup>167</sup> Ameren contends that

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<sup>162</sup> *Id.* (citing *ISO New England Inc.*, 117 FERC ¶ 61,070, at PP 39-52 (2006)).

<sup>163</sup> *Id.* at 25-26.

<sup>164</sup> *Id.* at 26-27.

<sup>165</sup> *Id.* at 27.

<sup>166</sup> *Id.*

<sup>167</sup> Ameren Answer at 21 (citing Southwestern Answer at 26).

none of the expenses at issue belongs in Account 426.4 because they do not involve specific political actions designed to “influenc[e] public opinion with respect to the election or appointment of officials, referenda, legislation, or ordinances . . . .” as was the case in Opinion No. 554.<sup>168</sup> Similarly, Ameren contends that the ISO New England case cited by Southwestern involved activities associated with specific legislation, whereas the disputed expenses at issue here are not tied to legislation.<sup>169</sup>

94. In response to Southwestern’s argument that Ameren was engaged in lobbying at the time in Illinois and Missouri and thus these expenses are related to those efforts and must be rejected, Ameren contends that Southwestern errs. As an initial matter, Ameren notes that the lobbying issue in Illinois that Southwestern refers to occurred in 2016 and thus preceded the rate period at issue here. Further, Ameren contends that Southwestern’s argument is speculation, and that the mere fact that lobbying efforts may have been undertaken during a rate period is insufficient to justify removal of costs absent a showing that such costs were related to the political activity and thus inappropriately included in rates. Ameren clarifies that the Missouri wind farm issue, raised by Southwestern, involves an affiliate company that uses the same activity codes, not Ameren Illinois, and thus is not relevant as its costs are separately recorded. Ameren also notes that, while the community relations activity code can be used for visitor center costs, Ameren’s reference to a visitor center was misleading as Ameren Illinois does not have a visitor center. Ameren states that Ameren Missouri has visitor centers and Ameren has confirmed that none of those costs are included in Ameren Illinois rates. Ameren reiterates that none of its community relations, public relations, social media, or governmental advocacy related expenses at issue in this proceeding pertain to the type of expenses that are required to be recorded to Account 426.4.<sup>170</sup>

## ii. Commission Determination

95. We find that Ameren has provided sufficient justification regarding Ameren Illinois’ allocation of expenses entitled community relations, public relations, social media, and governmental advocacy.<sup>171</sup> The description of Account 426.4 is as follows:

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or

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<sup>168</sup> *Id.* at 22 (citing *PATH*, 158 FERC ¶ 61,050 at P 52).

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 22-23.

<sup>171</sup> *See* 2018 Formal Challenge Order, 169 FERC ¶ 61,147 at P 69.

ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.<sup>172</sup>

The Commission has provided limited guidance regarding what is and is not properly included in Account 426.4. Order No. 276 provides a non-exhaustive list as to which types of expenses should generally be placed in Account 426.4 or an operating expense account.<sup>173</sup> For example, Order No. 276 states that “[a]dvertising in various mass communication media to influence the election or appointment of public officers or proposed legislation at Federal, state, and local levels,” “[l]etters or inserts in customers’ bills or in reports to stockholders to influence the opinion of recipients as to the election or appointments of public officers or pending legislation,” and “[p]ayments for lobbying or other fees to persons or organizations including law firms, service companies, or other affiliated interests, for influencing the passage or defeat of pending legislative proposals or influencing official decisions of public officers” are all categories of expenses that should be recorded to Account 426.4. On the other hand, Order No. 276 states that “[r]easonable expenditures for promotional and ‘good will’ advertising,” “[c]osts of appearances before [the Commission] or other Federal and State regulatory agencies in various regulatory proceedings,” and “[c]osts of submitting comments on this proceeding or other regulatory proceedings” are categories of expenses that should be recorded in operating expense accounts.<sup>174</sup>

96. We find that Ameren Illinois’ expenses relating to working with the media, and monitoring and reviewing federal, state, and local environmental, safety, and health law and regulations affecting operations are not of the kind that should be recorded in

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<sup>172</sup> 18 C.F.R. pt. 101, Account 426.4 (2019).

<sup>173</sup> *Expenditures for Political Purposes - Amendment of Account 426, Other Income Deductions, Uniform System of Accounts, and Report Forms Prescribed for Electric Utilities and Licensees and Natural Gas Companies - FPC Forms Nos. 1 and 2*, Order No. 276, 30 FPC 1539 (1963), *order on reh'g*, 31 FPC 411 (1964).

<sup>174</sup> *Id.* at 1542-43.



Account 426.4.<sup>175</sup> For example, we agree with Ameren that it is appropriate to record some of its public relations expenses to Account 923, which includes expenses relating to “accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants . . . .”<sup>176</sup> While Southwestern cites the *PATH* order, on rehearing, the Commission reversed its findings on costs required to be recorded in Account 426.4 based on a reconsideration of the unique facts in the proceeding. We find that Southwestern has not demonstrated that the expenses Ameren Illinois has recorded to Accounts 920, 923, or others should instead be recorded to Account 426.4 and we thus deny the 2019 Formal Challenge with respect to this issue.

97. With regard to Southwestern’s argument that Ameren Illinois was engaged in extensive lobbying during the timeframe of the 2019 Formal Challenge, we find that Southwestern has not alleged any specific expense related to Ameren Illinois’ lobbying efforts that were recorded to an inappropriate account and we therefore deny the 2019 Formal Challenge with respect to this issue as well.

**e. Commodity Settlements**

**i. 2019 Formal Challenge and Answers**

98. Southwestern claims that expenses entitled “commodity settlements” are related to retail and should be recorded to Account 557 (Other Expenses). Southwestern notes that Ameren Illinois must procure transmission service from MISO, on behalf of its retail customers, and that these costs are incurred on behalf of its retail customers. Southwestern adds that the Commodity Settlements group does not get involved with any energy or transmission settlement on behalf of its wholesale transmission customers, as wholesale customers do all settlements themselves and make payments to MISO. Southwestern argues that, because Ameren Illinois has turned over operational control of its facilities to MISO, Ameren Illinois’ wholesale transmission customers pay these same settlement costs to MISO and should not be forced to share Ameren Illinois’ costs of procuring transmission for its own retail customers. Southwestern submits, therefore, that the Commission should direct Ameren Illinois to record the expenses to Account 557.<sup>177</sup>

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<sup>175</sup> We also note that Ameren has confirmed that no expenses relating to its visitors center have been charged to Ameren Illinois’ customers.

<sup>176</sup> 18 C.F.R. pt. 101, Account 923 (2019).

<sup>177</sup> 2019 Formal Challenge at 22-23.

99. Ameren states that whether some commodity settlements expenses relate to procurement of transmission service on behalf of Ameren Illinois' retail customers is irrelevant. Ameren argues that the Commodity Settlements group is responsible for all payments to and from MISO for both commodity settlements and transmission settlements, in addition to financial reporting for such settlement activity, meaning that the group's back office activities include transmission revenues settlements. Thus, Ameren argues that these costs are properly recorded as Administrative and General expenses and allocated to the ATRR, as required by the Attachment O-AIC formula rate. Ameren claims that Southwestern's arguments are therefore an impermissible collateral attack on the filed formula rate.<sup>178</sup>

100. In its answer, Southwestern states that Ameren's response does not refute Southwestern's assertions that its wholesale transmission customers settle their own commodity-related payments with MISO. Southwestern reiterates that Ameren should be required to provide examples of commodity-related payments on behalf of wholesale transmission with MISO and explain why its wholesale customers should share Ameren's expenses in addition to paying their own expenses to MISO.<sup>179</sup>

101. In its answer, Ameren states that it did not refute Southwestern's assertion that Ameren Illinois' wholesale transmission customers perform their own commodity-related settlements with MISO because Southwestern's assertion is irrelevant. Ameren states that there are undoubtedly countless expenses that Ameren Illinois incurs as a transmission provider that are identical in nature to those expenses its wholesale transmission customers incur as retail service providers, such as expenses for computer information systems. Ameren contends that, based on Southwestern's logic, Ameren Illinois should not be able to allocate any of its computer information system expenses to its wholesale transmission customers because its wholesale transmission customers have their own computer information system expenses.<sup>180</sup> Ameren reiterates that the Commodity Settlements group is responsible for both commodity settlements and transmission settlements. Ameren argues that, because the services provided by the Commodity Settlements group cannot be appropriately charged directly to any particular operating function, it follows that the expenses associated with this group are properly recorded as Administrative and General expenses and then allocated to Ameren Illinois' ATRR in accordance with the Attachment O-AIC formula rate.<sup>181</sup>

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<sup>178</sup> Ameren Response at 38-39.

<sup>179</sup> Southwestern Answer at 28.

<sup>180</sup> Ameren Answer at 24.

<sup>181</sup> *Id.* at 24-25.

**ii. Commission Determination**

102. Consistent with the Commission’s findings in the 2018 Formal Challenge Order, we find that Ameren has provided sufficient explanation that its Commodity Settlements, which include all payments to and from MISO for both commodity and transmission settlements, are appropriately recorded as Administrative and General expenses and allocated to the ATRR as required by the Tariff.<sup>182</sup> Therefore, we deny the 2019 Formal Challenge with respect to the accounting of these expenses.

**7. Account 923 Adjustments**

**a. 2019 Formal Challenge and Answers**

103. Southwestern argues that certain categories of Account 923 expenses should be excluded from Ameren Illinois’ ATRR. As an initial matter, Southwestern states that Account 923 includes amounts charged to Ameren Illinois by affiliates and non-Ameren entities, such as consulting or engineering firms. Southwestern contends that none of the amounts charged by affiliates should be recorded to Account 923 because the affiliates are a part of Ameren Corporation and are therefore not outside entities. Southwestern also argues that many of the Account 923 expenses are more appropriately recorded in other accounts.<sup>183</sup> For example, Southwestern disputes certain expenses related to public relations and retail business that include the following four cost categories: advertising; education programs; public relations; and video production. Instead of booking these categories to Account 923, Southwestern contends that these items should instead be recorded to Accounts 426.4, 906, or 909.<sup>184</sup>

104. A second category of expenses Southwestern disputes are those related to external business: business and corporate risk management; competitive, industry intelligence; market research and analysis; and product research and analysis.<sup>185</sup>

105. With regard to Southwestern’s allegation that activities related to advertising, education programs, public relations, and video production should not be recorded in Account 923 because there is “no provision for recording expenses to Account No. 923 that are incurred by [Ameren Illinois] and its affiliates,” Ameren questions whose costs

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<sup>182</sup> 2018 Formal Challenge Order, 169 FERC ¶ 61,147 at P 77.

<sup>183</sup> 2019 Formal Challenge at 23-24.

<sup>184</sup> *Id.* at 24-25.

<sup>185</sup> *Id.* at 26.

Southwestern would expect to be recorded in Ameren Illinois' Account 923.<sup>186</sup> Ameren contends that, in general, these arguments have been addressed in prior formal challenges. Ameren notes that, over the last two years, Southwestern has proposed to book education programs expenses to four different accounts. Ameren contends that one can only conclude that Southwestern is randomly picking accounts, and the only observable consistency is that none of the accounts is included in Attachment O-AIC.<sup>187</sup>

106. With respect to Southwestern's claim that affiliate charges should not be recorded in Account 923, Ameren asserts that Ameren Illinois properly recorded these expenses. Ameren contends that Southwestern appears to believe that expenses of an affiliate of Ameren Illinois (i.e., Ameren Services) related to outside service that are ultimately allocated to Ameren Illinois cannot be recorded in Account 923. Ameren states that it disagrees. Ameren explains that, pursuant to Ameren Services' General Services Agreement with Ameren Illinois, costs allocated by Ameren Services to its affiliates are generally allocated using the same Commission accounts as such costs were originally recorded by Ameren Services. Ameren states that, therefore, when Ameren Services incurs costs that are properly recorded in Account 923, these costs remain in Account 923 when allocated to Ameren Illinois.<sup>188</sup>

107. With regard to expenses related to: business and corporate risk management competitive industry intelligence; market research and analysis; and product research and analysis, Ameren contends that, because Southwestern provides no reason for their exclusion and provides no account numbers that Southwestern believes these expenses should be included in, Southwestern's request is unsupported and should be rejected.<sup>189</sup> Ameren argues that Southwestern does not define "external business" or state why these costs should be excluded. Ameren explains that business and corporate risk management activity is used to capture the expense of employees performing tasks to implement and maintain a business and corporate risk management process, which include all of the businesses of Ameren Illinois, including transmission, and thus a portion of these costs are appropriately included in the ATRR. Ameren adds that the remaining three activities are customer research and analysis, with the largest item being related to J.D. Powers. Ameren contends that obtaining feedback from customers of Ameren Illinois cannot be arbitrarily split between transmission and distribution, and thus it is a cost that

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<sup>186</sup> Ameren Response at 40-41 (citing 2019 Formal Challenge at 24).

<sup>187</sup> *Id.* at 41.

<sup>188</sup> *Id.* at 41-42.

<sup>189</sup> *Id.* at 44.

encompasses the entire Ameren Illinois business and is properly recorded as an Administrative and General expense.<sup>190</sup>

108. Ameren states that, while Southwestern fails to mention the Service Company Tax Expense in the text of the 2019 Formal Challenge, Southwestern includes it as the single largest adjustment to the ATRR in Attachment 11. Ameren submits that it is unclear whether Southwestern is arguing for exclusion of this item, but if it is, Ameren argues that Southwestern has failed to support its position and has provided no support or justification for excluding this item.<sup>191</sup>

109. In response, Southwestern states that Ameren's answer does not deny Southwestern's assertion that a number of expenses recorded to Account 923 are incurred by its affiliates that are not outside employees. Southwest contends that the Uniform System of Accounts only allows expenses incurred by non-employees who are employed for a special or temporary purpose *and* are not the utilities' employees. Southwestern argues that affiliate employees are not outside employees, nor are Ameren Illinois employees employed for a special or temporary purpose.<sup>192</sup>

110. With regard to public relations and retail business expenses, Southwestern states that, while Ameren acknowledges Southwestern's concerns as to these expenses, Ameren declines to discuss what precise activities these costs support. Southwestern concludes that Ameren's silence demonstrates that it is correct to assume that these expenses further Ameren Illinois' relationship with the general public and boost Ameren Illinois' name in the community and to public officials.<sup>193</sup>

111. With regard to Ameren's statement that its expenses recorded to competitive, industry intelligence; market research and analysis; and product research and analysis are related to customer research and analysis, the largest of which being related to J.D. Powers, Southwestern questions how many Ameren Illinois transmission customers J.D. Powers surveyed. Southwestern contends that the Commission should refuse to approve the recovery of any expenses related to customer surveys or research unless and until Ameren can identify the transmission customers surveyed, the date of such surveys, and the ways that Ameren Illinois incorporated these responses to improve service to

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<sup>190</sup> *Id.* at 44-45.

<sup>191</sup> *Id.* at 45.

<sup>192</sup> Southwestern Answer at 28-29.

<sup>193</sup> *Id.* at 29.

transmission customers.<sup>194</sup> Southwestern agrees that Ameren is correct that the cost of conducting customer satisfaction surveys cannot be arbitrarily split between transmission and distribution. However, Southwestern argues that the costs should not be split between transmission and distribution; rather, all of the costs should be recorded to a retail account. Southwestern submits that Account 916 (Miscellaneous Sales Expenses) includes costs involving “[s]pecial analysis of customer accounts and other statistical work for sales purposes not a part of the regular customer accounting and billing routine.”<sup>195</sup> Southwestern adds that, if the expense is not incurred “in connection with sales activities,” then the expense should be recorded to Account 910 (Miscellaneous Customer Service and Informational Expenses).<sup>196</sup>

112. In response to Ameren’s answer stating that Southwestern has not explained its proposed adjustment to Service Company Tax Expenses in the 2019 Formal Challenge, Southwestern states that it is concerned that Ameren Services included \$2.9 million as a tax expense that Ameren alleges resulted from the Tax Cuts and Jobs Act without explaining what part of the Tax Cuts and Jobs Act resulted in a tax expense. Southwestern argues that Ameren’s response does not explain why the passage of the Tax Cuts and Jobs Act resulted in an increase in Ameren Services’ tax burden, when the Tax Cuts and Jobs Act reduced the corporate tax rate and consequently caused utilities to have far too much ADIT associated with their operations and assets in their books.<sup>197</sup> Further, Southwestern notes that Ameren Services has no assets. Southwestern submits that, because Ameren Illinois’ formula incorporates the computations of income tax amounts on a standalone basis, and there is no provision for including any income tax liability of any other affiliate in the Attachment O rate formula, Ameren must be required to explain this unique tax liability incurred by Ameren Services.<sup>198</sup>

113. In its answer, Ameren states that it has explained previously that its public relations expenses at dispute include all actions associated with involving the company in working with the media, and that there is no support for including the expenses in

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<sup>194</sup> *Id.* at 34-35.

<sup>195</sup> *Id.* at 35.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 36.

<sup>198</sup> *Id.*

Account 426.4, which is an account that includes expenditures for the purpose of influencing public opinion regarding specific political actions.<sup>199</sup>

114. In response to Southwestern's contention that any expenses related to customer surveys should be excluded unless Ameren can identify the transmission customers surveyed, the date of the survey, and the ways that Ameren Illinois incorporated these responses to improve service to transmission customers, Ameren reiterates that obtaining feedback from customers cannot be arbitrarily split between transmission and distribution. Ameren notes that Illinois is an unbundled state and as such Ameren Illinois' retail customers take Commission-jurisdictional transmission service and pay the Attachment O-AIC rate for that service. As an example, Ameren states that the surveys have led to establishing an enhanced digital interface that provides customers with outage and restoration related information that can be accessed through the Ameren Corporation website and through cell phone text messaging. Ameren states that these services are available to all Ameren Illinois' customers and the costs incurred by Ameren encompass the entire Ameren Illinois business and therefore are properly recorded to Account 923.<sup>200</sup>

115. In response to Southwestern's argument that a \$2.9 million Service Company tax expense should be removed from Ameren Illinois' ATRR because it is unclear how the Tax Cuts and Jobs Act could lead to an additional tax burden incurred by Ameren Services, Ameren contends that the Tax Cuts and Jobs Act was enacted on December 22, 2017, which meant that Ameren Services' deferred tax assets and liabilities were required to be revalued in December 2017. Ameren states that Ameren Services, unlike Ameren Illinois, must record the full impact of this revaluation to its income statement immediately. Ameren explains that, in December 2017, Ameren Services had more deferred tax assets recorded on its stand-alone balance sheet than deferred tax liabilities, meaning that Ameren Services had a surplus of expenses that had not yet been deducted for tax purposes. Ameren further states that, as required by the enactment date of the Tax Cuts and Jobs Act, in December 2017 the deferred tax assets were revalued by crediting/decreasing the deferred tax asset and debiting/increasing deferred tax liabilities. Ameren continues that, consequently, as of December 31, 2017, Ameren Services had a net deferred tax asset on its balance sheet, and that, as a result of the income tax decrease from the Tax Cuts and Jobs Act, these future tax deductions recorded on Ameren Services' balance sheet are now worth less as the tax benefits will be lower. Ameren argues that, therefore, an allocated portion of the impact of the decrease in the deferred

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<sup>199</sup> Ameren Answer at 25-26.

<sup>200</sup> *Id.* at 31.

tax assets is properly included as an affiliate expense that Ameren Services assessed to Ameren Illinois.<sup>201</sup>

**b. Commission Determination**

116. We find that Ameren has provided sufficient justification for recording expenses charged by affiliates to Account 923. While Southwestern asserts that Ameren Illinois improperly recorded affiliate costs to Account 923, we accept Ameren's explanation that Ameren Services incurred costs from outside services that were allocated to Ameren Illinois and Ameren Illinois properly recorded these outside services to Account 923 as such.<sup>202</sup>

117. With regard to Southwestern's argument that certain survey expenses should not be allocated to transmission customers, we find that Ameren has provided sufficient explanation. We agree with Ameren that the survey expense is a cost that encompasses the entire Ameren Illinois business and is properly recorded as an Administrative and General expense that is allocated to transmission as required by the Attachment O-AIC formula rate.

118. We deny the 2019 Formal Challenge concerning the inclusion of \$2.9 million that Ameren Illinois included in its ATRR for recovery. We find that Southwestern has not explained how Ameren Illinois's inclusion of such costs violates the filed rate formula or protocols.<sup>203</sup> We reject Southwestern's answer on this issue on the grounds that it introduces a new argument that should have been originally included in the 2019 Formal Challenge.<sup>204</sup>

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<sup>201</sup> *Id.* at 32-33.

<sup>202</sup> We note that we have addressed the appropriateness of Ameren Illinois' accounting of many of these issues elsewhere in the order. For example, we address the treatment of regulatory-related expenses in section III.B.6.a., and we address the treatment of public relations expenses in section III.B.6.d.

<sup>203</sup> A Formal Challenge shall: (a) Clearly identify the action or inaction which is alleged to violate the filed rate formula or protocols; (b) Explain how the action or inaction violates the filed rate formula or protocols. . . Attachment O-AIC. § IV.C(1)(a), (b).

<sup>204</sup> While we are rejecting Southwestern's Formal Challenge on this issue on procedural grounds, we are not convinced that Ameren Illinois' accounting is appropriate. We note that Commission audit staff has commenced, in Docket No. FA20-6-000, an audit of Ameren Corporation, including its compliance with the Uniform System of Accounts for centralized service companies under 18 C.F.R. pt. 367. The audit



## 8. Adjustments to Account 928 Regulatory Expenses

### a. 2019 Formal Challenge and Answers

119. Southwestern asserts that the 2017 True-Up shows that Ameren Illinois allocated a number of regulatory expenses to transmission that are related to disputes involving generator interconnections and have nothing to do with transmission service. Southwestern argues that Attachment O requires Ameren Illinois to first exclude all regulatory expenses recorded to Account 928 and then include expenses that are related to providing transmission service. Southwestern notes that there is no provision in Attachment O for allocating other regulatory expenses, including costs of generation interconnection agreements, to transmission.<sup>205</sup> Southwestern disputes Ameren Illinois' inclusion of any additional expenses, beyond the net book cost, related to "Tazewell 203" that Ameren explained in its response to Southwestern's 2019 Informal Challenge were related to a filing involving Ameren Illinois' acquisition of Commonwealth Edison Company (Commonwealth Edison) transmission facilities.<sup>206</sup> Southwestern contends that there is no provision for collecting any additional amount unless approved by the Commission and that Ameren Illinois does not state it received such approval. Southwestern argues that, if there are any other expenses related to this acquisition included by Ameren Illinois, the Commission should order Ameren Illinois to exclude such expenses.

120. Ameren disagrees with Southwestern's assessment of the "generator interconnection" regulatory expenses and argues that the Commission considers interconnection to be a transmission service that is regulated by the Commission.<sup>207</sup> In

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will also evaluate the associated public utilities' transactions with affiliated companies for compliance with the Commission's accounting requirements under 18 C.F.R. pt. 101. We expect Commission audit staff will ensure that Ameren Illinois is in full compliance with Commission regulations regarding the allocated income tax costs resulting from the Tax Cuts and Jobs Act.

<sup>205</sup> 2019 Formal Challenge at 27.

<sup>206</sup> *Id.* (citing Docket No. EC17-134-000).

<sup>207</sup> Ameren Response at 46 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at P 12 (2003) (stating that "[i]nterconnection is a critical component of open access transmission service"), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

addition, Ameren asserts that the MISO Transmission Expansion Plan addresses many transmission issues, including transmission issues associated with generator interconnection projects and the generation queue. Further, Ameren argues that many generator interconnections require network upgrades to the transmission system that result in changes in the underlying costs of the transmission system. Ameren claims that the interconnection agreements related to such interconnections are agreements that are filed at the Commission and, thus, generate regulatory expenses which are properly recorded in Account 928 and allocated to transmission according to the Attachment O-AIC formula rate.<sup>208</sup>

121. With regard to Southwestern's challenge to the Tazewell 203 docket, Ameren explains that this docket was an application for FPA section 203<sup>209</sup> approval for Ameren Illinois to acquire from Commonwealth Edison certain electric transmission lines and electrical facilities located in Tazewell County, Illinois. Ameren asserts that this is a transmission issue that affects transmission customers and that these costs are properly included in the ATRR. With regard to Southwestern's assertion that the Commission only allows recovery of net book costs, and that no other cost recovery associated with the transaction is allowed under Commission policy, Ameren states that Ameren Illinois maintained that the transaction would not have an adverse effect on rates but offered no hold harmless provision, and that the Commission determined that the acquisition was in the public interest and authorized it. Ameren submits that the \$1,000 regulatory expense in dispute cannot be said to have an adverse effect on rates.<sup>210</sup>

122. In its answer, Southwestern states that it does not dispute that interconnections are a part of the transmission system. Southwestern argues that the issue is who should pay for expenses related to generator interconnections. Southwestern contends that Ameren does not deny that the expenses Southwestern proposes to exclude are related to generator interconnections and it is therefore illogical to include any expenses, regulatory or otherwise, associated with generator interconnects while the costs associated with these interconnects are excluded.<sup>211</sup> Southwestern submits that, with respect to regulatory expenses related to Tazewell, while Ameren Illinois notes that it stated in its section 203 application that the transaction would not have any adverse effect on rates,

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<sup>208</sup> *Id.*

<sup>209</sup> 16 U.S.C. § 824b (2018).

<sup>210</sup> Ameren Response at 47-49 (citing *Ameren Illinois Co.*, 160 FERC ¶ 62,185 (2017)).

<sup>211</sup> Southwestern Answer at 37.

the inclusion of this expense does have adverse effects on rates and therefore should not be included.<sup>212</sup>

123. In its answer, Ameren contends that two of the challenged expenses are related to a court case that concerned several Commission orders where the Commission ruled on whether the transmission owner or the interconnecting generation customers have the option to fund required transmission network upgrades. Ameren reiterates that these cases directly relate to the obligation of Ameren Illinois under the MISO Tariff to provide Commission-regulated transmission interconnection services and are clearly transmission-related expenses. Ameren contends that Southwestern's argument boils down to a belief that costs to litigate policy issues related to generator interconnections should be directly assigned to the interconnection customers prompting such litigation because certain costs associated with generator interconnections are directly assigned to such generator. Ameren argues that the Commission has already disagreed with Southwestern's position on this issue in the 2017 Formal Challenge Order on Rehearing, where the Commission stated that, "[a]s a transmission owner in MISO, Ameren Illinois may incur costs associated with disputes it may have with generators involving, for example, payments for network upgrades. These costs relate to transmission and are properly included in the Ameren Illinois' transmission rates."<sup>213</sup> Ameren further argues that Southwestern's logic completely ignores that the outcome of these proceedings has broad implications affecting all transmission customers, including Southwestern, not just those specific interconnection customers that were subject of these particular cases.<sup>214</sup>

124. Ameren also disputes Southwestern's issue with expenses associated with the purchase of the Tazewell line. Ameren submits that the line was purchased as a part of a project to enhance the capability of the Ameren Illinois transmission system. Ameren states that the purchased Tazewell line provided the interconnection of two existing Ameren Illinois transmission lines, and the contiguous connection created by the purchase of the line has enabled Ameren Illinois to undertake two system improvement projects. Ameren contends that, therefore, while it is true that Ameren Illinois only included in its ATRR the net book value of the Tazewell line, it is appropriate for Ameren Illinois to also recover the \$1,000 expense associated with the purchase of the Tazewell line because such costs are associated with subsequent new transmission

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<sup>212</sup> *Id.*

<sup>213</sup> Ameren Answer at 34 (citing 2017 Formal Challenge Order on Rehearing, 169 FERC ¶ 61,042 at PP 32).

<sup>214</sup> *Id.* at 34-35.

projects, such as a communication link between two of Ameren Illinois' substations and the installation of a ring bus station.<sup>215</sup>

**b. Commission Determination**

125. We find that Ameren has adequately justified Ameren Illinois' accounting of regulatory expenses recorded in Account 928 in the 2017 True-Up. We find that, as a transmission owner in MISO, Ameren Illinois may incur costs associated with disputes it may have with generators involving, for example, payments for network upgrades. These costs relate to transmission and are properly included in Ameren Illinois' transmission rates.<sup>216</sup> Furthermore, Southwestern has not provided any evidence that the regulatory expenses do not have any connection to transmission facilities or should relate to generation. With regard to expenses associated with the Tazewell 203 docket, we find that such expenses are appropriately allocated to transmission customers.<sup>217</sup> Therefore, we deny the 2019 Formal Challenge as it relates to adjusting regulatory expenses for the 2017 True-Up.

**9. Association Dues**

**a. 2019 Formal Challenge and Answers**

126. Southwestern asserts that Ameren Illinois' list of industry association dues includes a number of dues that are made to law and consulting firms and advocacy groups that should not be recorded as industry association dues to Account 930.2 (Miscellaneous General Expenses). Instead, Southwestern argues that these dues should be recorded to Accounts 426.4 or 426.5 and should be excluded from Ameren Illinois' ATRR.<sup>218</sup>

127. Ameren states that many of the entities identified by Southwestern are obvious state or national trade or industry associations. Ameren asserts that the Commission's regulations provide that Account 930.2 expenses may include "industry association dues

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<sup>215</sup> *Id.* at 35.

<sup>216</sup> 2017 Formal Challenge Order on Rehearing, 169 FERC ¶ 61,042 at P 32.

<sup>217</sup> We remind Ameren Illinois that the Commission, when it authorized the acquisition of the Tazewell facilities, required Ameren Illinois to notify the Commission within 10 days of the date that the disposition of the jurisdictional facilities has been consummated. *Ameren Illinois Co.*, 160 FERC ¶ 62,185 (2017).

<sup>218</sup> 2019 Formal Challenge at 28.

for company memberships”<sup>219</sup> and that Account 930.2 is properly included in the Attachment O formula rate. Ameren argues that the Commission’s regulations do not state that certain types of memberships must be excluded from, or not included in, Account 930.2, other than the requirement to exclude Electric Power Research Institute membership dues. Ameren concludes, therefore, that there is no basis for Southwestern’s claim that such expenses should be excluded from the ATRR, as a portion of these expenses are properly allocated to transmission as required by the Attachment O-AIC formula rate.<sup>220</sup> Ameren claims that the accounts suggested by Southwestern, Accounts 426.4 and 426.5, are for expenditures pertaining to certain civic political, and related activities, and other deductions. Ameren argues that the expenses Southwestern identifies do not fall into the categories contained in Accounts 426.4 or 426.5 and Southwestern’s proposed adjustments must be rejected.<sup>221</sup>

128. In its answer, Southwestern contends that Ameren’s defense of the recording of association dues confirms Southwestern’s assertion that the amounts paid to law and consulting firms and to advocacy groups are inappropriately recorded and should be excluded. Southwestern states that the Commission ruled in *PATH* that “memberships for corporate stewardships should be recorded in the appropriate 426 Account.”<sup>222</sup> Southwestern further argues that the Commission has stated that memberships in civic organizations should be recorded in Account 426.5 and such dues should not be recorded to Account 930.2.<sup>223</sup> Southwestern argues that all of the industry associations discussed by Ameren in its response fall into these categories.

129. In its answer, Ameren contends that *PATH* is clear that the main purpose of the disputed memberships in that proceeding was to reach out to the community to enhance the prospects of a project advocated by PATH. Ameren claims that PATH admitted that the purpose of its memberships was to influence public opinion with respect to receiving government approval of its project. Ameren argues that Southwestern has made no similar showing with respect to the association dues it has challenged in this proceeding. Ameren submits that, in fact, except for two minor items, none of the association dues here fall into the category of costs properly included in Account 426.4 because they do

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<sup>219</sup> Ameren Response at 52 (citing 18 C.F.R. pt. 101, Account 930.2, Item 2 (2019)).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> Southwestern Answer at 37-39 (citing *PATH*, 158 FERC ¶ 61,050 at P 75).

<sup>223</sup> *Id.* (citing *PATH*, 158 FERC ¶ 61,050 at PP 70, 75).

not involve specific political actions. Ameren concludes that Southwestern's argument must be rejected.<sup>224</sup>

**b. Commission Determination**

130. We agree with Ameren that the Commission's regulations do not state that certain types of memberships must be excluded from, or not included in, Account 930.2 to the extent the membership is associated with utility operations. We also agree with Ameren that there is not anything in the formula rate that directs exclusion of trade or industry association expenses from the ATRR, other than the requirement to exclude Electric Power Research Institute membership dues. We also find Ameren has provided adequate justification for the organizations that Ameren Illinois has recorded as industry association dues to Account 930.2. However, consistent with longstanding practice, while association membership organizations can conduct lobbying on behalf of their members, the portion of the membership fees associated with the costs of such lobbying activities should be recorded in Account 426.4.<sup>225</sup> Therefore, we grant the 2019 Formal Challenge, in part, and direct Ameren Illinois in the compliance filing directed herein to provide a summary of any changes in accounting to record portions of the membership dues associated with lobbying in Account 426.4. Ameren Illinois must also reflect any necessary changes in accounting in the annual true-up in accordance with formula rate protocols.

**10. Income Tax Rate Reductions**

**a. 2019 Formal Challenge and Responses**

131. Southwestern states that it has identified five primary problems with Ameren Illinois' adjustments to excess ADIT resulting from the Tax Cuts and Jobs Act.<sup>226</sup> First, Southwestern states that Ameren Illinois' calculations lack transparency, as Ameren Illinois did not provide full details of its calculations. For example, in Line 24a, Page 3 of Ameren Illinois's Attachment O for the 2019 Projections, Ameren used the annual

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<sup>224</sup> Ameren Answer at 36-37.

<sup>225</sup> *ISO New England Inc.*, 117 FERC ¶ 61,070 at P 45 (“[T]he portion of industry association fees where that association undertakes lobbying activities should also be recorded in Account 426.4.”). *See also id.* n.63 (“In these cases, the Commission permitted the utility to obtain the necessary information from the industry association to make a proper allocation of the dues payment to the appropriate operating and nonoperating expense accounts.”).

<sup>226</sup> As noted above, Southwestern has withdrawn the fifth item it identified, Equity AFUDC. *See supra* note 14.

excess ADIT amount of \$14.8 million but did not provide any information about how Ameren Illinois arrived at that amount. Second, Southwestern claims that the excess ADIT computed by Ameren Illinois is grossly understated. Third, Southwestern argues that Ameren Illinois' use of amortization periods is problematic and that no link between the amount of the annual amortization of \$14.8 million and the derivation of the average rate assumption method (ARAM) period used was provided. Southwestern states that, as Ameren Illinois explained in its response to the 2019 Informal Challenge, based on the amounts used by Ameren Illinois, the use of ARAM will result in amortizing the excess ADIT in approximately 587 years for the 2017 True-Up and in 41 years for the 2019 Projections. Fourth, Southwestern states that Ameren Illinois reduced the excess ADIT Accounts 282 and 283 balances by excess ADIT Account 190 balance. Southwestern states that these balances should be treated differently and argues that excess ADIT Accounts 282 and 283 balances should be appropriately amortized.<sup>227</sup>

132. Southwestern also contends that the Tax Cuts and Jobs Act will result in the elimination of or limitations on certain income tax deductions. Southwestern argues that, if the rates recover amounts in excess of such limitations and exclusions, not only would Ameren Illinois recover amounts not permitted by the Internal Revenue Service, it may record the tax effect of the excess amount to Account 190 and recover a return on this tax effect related to non-allowable expenses. Southwestern submits that, if Ameren Illinois has included any such non-allowable amounts in the 2019 Projections, then these non-allowable amounts should be excluded.<sup>228</sup>

133. In response, Ameren states that the excess ADIT normalization provision in the Tax Cuts and Jobs Act requires that excess deferred income taxes be used to reduce revenue requirement and revenue no sooner than would occur as the book/tax difference reverses. Ameren explains that, under this method, the utility identifies the deferred tax reversal pattern (comparing book depreciation versus tax depreciation) and reverses the excess ADIT beginning when book depreciation exceeds tax depreciation and the deferred tax turnaround occurs.<sup>229</sup> Ameren states that, therefore, some vintages of excess ADIT will not begin to reverse for several years after the tax rate decreased and that, by law, they cannot be refunded to customers until, for any vintage year, book depreciation exceeds tax depreciation. Ameren submits that, by law, if a utility has the records to

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<sup>227</sup> 2019 Formal Challenge at 30-32.

<sup>228</sup> *Id.* at 34.

<sup>229</sup> Ameren Response at 53.

compute ARAM, which Ameren Illinois does, the utility cannot use straight-line amortization.<sup>230</sup>

134. In response to Southwestern's argument that excess ADIT amounts are understated by more than \$20 million, Ameren explains that using Southwestern's proposed calculation methodology would cause Ameren Illinois to have a normalization violation under the tax law and lose its ability to take accelerated tax depreciation.<sup>231</sup>

135. Ameren claims that Southwestern's argument that Ameren's choice of amortization period is inappropriate and demonstrates Southwestern's misunderstanding of the change in the tax law. Ameren states that, for the 2017 True-Up, there is no amortization of excess ADIT related to the Tax Cuts and Jobs Act because the Tax Cuts and Jobs Act became effective January 1, 2018. Ameren explains that the 2017 amortization of excess ADIT shown is related to the 1986 federal tax rate change, as well as the Illinois state tax rate change in 2017; thus, the excess amortization of \$949,661 in 2017 did not include any excess related to the Tax Cuts and Jobs Act tax rate change. Ameren adds that Southwestern incorrectly divides Ameren Illinois' excess ADIT balances as of December 31, 2017 caused by the Tax Cuts and Jobs Act by a 2017 amortization that is unrelated to that excess amount to estimate its 587 years of amortization.<sup>232</sup>

136. Ameren contends that Southwestern's claims that the ADIT balances in Accounts 282 and 283 should be treated differently from ADIT Account 190 was addressed in a previous order, where the Commission stated:

With respect to addressing the impact of income tax rate changes on its ADIT Account 190 balance, Ameren has provided sufficient information in support of its filing . . . . Contrary to Southwestern's claim that the proposed formula rate revisions for excess or deficient ADIT only account for ADIT that serves to reduce rate base, such as Accounts 282 and 283, we note that those proposed revisions are not limited to just those accounts, and Ameren states that the proposed revisions to the Tariff will adjust for the impact of income tax rate changes on deferred income taxes in Account 190, just as

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<sup>230</sup> *Id.* at 53-54.

<sup>231</sup> *Id.* at 54.

<sup>232</sup> Southwestern Response at 55.



it adjusts for deferred income taxes in Accounts 282 and 283.<sup>233</sup>

137. With regard to Southwestern's arguments concerning the elimination or limitation of deductions, Ameren argues that Southwestern's list contains several deductions that do not pertain to Ameren Illinois, such as the Orphan Drug credit, and the inclusion of these items demonstrates Southwestern's lack of understanding of the tax law changes.<sup>234</sup>

138. With regard to Southwestern's claim that Ameren Illinois may record the tax effects of such deductions to Account 190, Ameren argues that it appears that Southwestern is confusing permanent book-tax differences, which is what Southwestern listed in the 2019 Formal Challenge, with temporary book-tax differences. According to Ameren, for permanent book-tax differences that are expensed for financial statement purposes but are never deductible for tax purposes, no tax benefit is recorded. Ameren concludes that these items are not recorded to Account 190 and do not impact rate base.<sup>235</sup>

139. In its answer, Southwestern discusses its five primary problems with Ameren Illinois' computation of excess ADIT.<sup>236</sup> First, Southwestern states that Ameren's response did not provide the derivation of the ARAM used for amortizing excess ADIT, and that, until Ameren provides the detailed calculation in support of its ARAM, neither Southwestern nor the Commission can verify that Ameren's calculations are based on proper records.<sup>237</sup> Second, Southwestern states that it reviewed the SWEC 4-3 Attachment and was unable to find any reference to the \$949,661 amortized excess

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<sup>233</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163, at P 53 (2018). Ameren states that on rehearing, the Commission found that it did not err in failing to adopt Southwestern's proposed five-year amortization period for unprotected ADIT. Ameren Response at 57 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,238, at P 24 (2019)).

<sup>234</sup> Ameren Response at 57.

<sup>235</sup> *Id.* at 58. Ameren notes that Ameren Illinois' formula rate now contains a mechanism in the Attachment O-AIC formula to reflect these permanent book-tax differences.

<sup>236</sup> Southwestern notes that it will not pursue the fifth problem, relating to whether Ameren Illinois' ADIT-related calculations use Equity AFUDC. Southwestern Answer at 41.

<sup>237</sup> *Id.* at 38-39.

ADIT amount.<sup>238</sup> Third, Southwestern reiterates that the Commission's order in Docket No. ER17-2323 does not foreclose the use of an amortization period other than the use of the amortization period based on remaining average life.<sup>239</sup> Fourth, Southwestern argues that it never alleged that Ameren Illinois did not incorporate the impact of Account 190 ADIT. Rather Southwestern states that its allegation was that Account 190 ADIT should be different than Accounts 282 and 283 ADIT, as the amounts in Accounts 282 and 283 are funded by rate payers whereas Account 190 ADIT is funded by no one. Southwestern submits that neither Ameren nor the Commission in Docket No. ER17-2323 addressed this issue.<sup>240</sup>

140. With regard to the argument that the Tax Cuts and Jobs Act limited and excluded certain expenses, Southwestern contends that the issue here is that Ameren Illinois should not only exclude those expenses, but also any associated ADIT related to those expenses.<sup>241</sup>

141. In its answer, Ameren argues that each argument is without merit and should be rejected.

142. First, in response to Southwestern's argument that the excess ADIT calculations lack transparency, Ameren notes that the information Southwestern is seeking pertains to the 2019 projection that will be trued-up with actual numbers once such numbers become available. Ameren states that it uses a complex software package to derive the ARAM rates that are needed to make its excess ADIT calculations. Ameren adds that, for the 2019 projection, its software calculated the excess ADIT amortization using ARAM for property-related protected and unprotected excess ADIT, which incorporated forecasted retirements and book depreciation. Ameren explains that, at the time of Southwestern's data request seeking detailed information about the calculation of excess ADIT in the 2019 projection, the software did not have the capability to provide the detailed report sought by Southwestern. Ameren states that it recently acquired a software tool capable of extracting the data Southwestern was seeking and will make the data available for Southwestern's review on a going-forward basis.<sup>242</sup>

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<sup>238</sup> *Id.* at 39.

<sup>239</sup> *Id.* at 39-40.

<sup>240</sup> *Id.* at 40.

<sup>241</sup> *Id.* at 41-42.

<sup>242</sup> Ameren Answer at 38.

143. Second, in response to Southwestern's argument that Ameren did not provide a full explanation or derivation of the amortized excess ADIT amount of \$949,661, and the total amortized excess ADIT amount of \$14.8 million, Ameren contends that Southwestern is misguided. With respect to the amortized \$949,661 set forth in the 2017 True-Up calculation, Ameren states that it provided a detailed breakdown of the amortization of excess/deficient ADIT as set forth in Attachment 1 of SWEC 4-3. Ameren adds that, since the Tax Cuts and Jobs Act did not become effective until January 1, 2018, there is no Tax Cuts and Jobs Act-related excess ADIT reflected in Attachment of SWEC 4-3 since that exhibit dealt entirely with the 2017 True-Up. With respect to the calculation of the \$14.8 million of amortized excess ADIT in the 2019 projection, Ameren reiterates that the software tool needed to provide the transparency Southwestern sought was not available when Ameren developed its estimated; however, Ameren will provide the transparency sought by Southwestern when it becomes available for the 2019 True-Up.<sup>243</sup>

144. In response to Southwestern's argument regarding whether Ameren Illinois should use a five-year amortization period for unprotected excess ADIT amounts in the 2019 projection, Ameren states that Ameren Illinois remains firm in its position that the Commission has not suggested that a five-year amortization period should be used. Ameren contends that it is reasonable to amortize unprotected property-related excess/deficient ADIT using the same methodology used for amortizing protected excess/deficient ADIT and intends to do so until otherwise instructed by the Commission.<sup>244</sup>

145. In response to Southwestern's argument that Account 190 ADIT should be treated differently than Accounts 282 and 283 ADIT, Ameren states that Southwestern provides no support for its position. Ameren states that it has properly included in the Attachment O-AIC ATRR the amortization of excess/deficient ADIT related to Accounts 190, 282, and 283.<sup>245</sup>

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<sup>243</sup> *Id.* at 39-40.

<sup>244</sup> *Id.* at 40. Ameren notes that, on November 21, 2019, the Commission issued an order in Docket No. RM19-5 addressing the rate impacts of the Tax Cuts and Jobs Act on jurisdictional rates. Ameren states that it was directed to make a compliance filing addressing the amortization approach and other matters, and that it will abide by the Commission's finding as it relates to this issue when the Commission issues its order on compliance. Ameren states that in the meantime Ameren Illinois is using ARAM for both protected and unprotected excess deferred taxes which the Commission found reasonable in Docket No. ER17-2323.

<sup>245</sup> *Id.* at 40-41.

146. Ameren also responds to Southwestern's argument that Ameren Illinois has inappropriately included certain expenses in its ATRR that were disallowed by the Tax Cuts and Jobs Act. Ameren contends that the Tax Cuts and Jobs Act only defines what expenses can or cannot be deducted from an income tax perspective and does not dictate whether such expenses are recoverable in the Attachment O-AIC ATRR. Ameren argues that its approach in this case is consistent with *Columbia Gulf Transmission Co.*<sup>246</sup> as it properly includes expenses incurred in providing service (regardless of how those expenses are treated for tax purposes), as well as including a provision for permanent tax differences in the calculation of the allowable taxes. Ameren states that, while many of the non-deductible expenses Southwestern lists in the 2019 Formal Challenge are not applicable to Ameren Illinois, Ameren agrees that there are non-deductible items that could be relevant to Ameren Illinois in the future. Ameren contends that, at that time, the impact of the permanent tax difference would be included in the tax calculation consistent with the Commission's order in Docket No. ER17-2323.<sup>247</sup>

**b. Commission Determination**

147. We deny the 2019 Formal Challenge as it relates to issues involving the Tax Cuts and Jobs Act. With regard to Southwestern's argument concerning transparency, we find that Ameren has provided sufficient information to Southwestern to evaluate Ameren Illinois' annual update as it relates to income tax and income tax adjustments. We also find that Ameren provided sufficient explanation as to how Ameren Illinois derived its excess ADIT amounts.

148. We find that Southwestern's argument concerning the amortization period is a collateral attack on Ameren Illinois' Commission-approved Attachment O-AIC formula rate and therefore outside of the scope of a formal challenge.<sup>248</sup>

149. We find that Southwestern's claim that ADIT Accounts 282 and 283 balances should be treated differently than ADIT Account 190 is unsupported. We further find that Southwestern has not supported its claim that Ameren Illinois inappropriately accounted for the amortization of excess/deficient ADIT in Accounts 190, 282, and 283. To the extent that Southwestern is disputing how Ameren Illinois' Attachment O treats

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<sup>246</sup> Opinion No. 173, 23 FERC ¶ 61,396, at 61,850, 61,852 (*Columbia Gulf*), *reh'g denied*, 24 FERC ¶ 61,258 (1983), *aff'd sub nom. City of Charlottesville v. FERC*, 774 F.2d 1205 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1108 (1986).

<sup>247</sup> Ameren Answer at 43.

<sup>248</sup> See *Midcontinent Independent System Operator, Inc.*, 163 FERC ¶ 61,163 at P 56 (finding "Ameren's proposal to apply amortization in the same manner to both 'protected' and 'non-protected' deferrals to be just and reasonable").

Accounts 190, 282, and 283, we reject such an argument as a collateral attack on Ameren Illinois' Commission-approved Attachment O-AIC.

150. With regard to the Tax Cuts and Jobs Act's elimination or reduction of certain expense deductions for income taxes, we find that Southwestern has not demonstrated that Ameren Illinois included such deductions in its 2019 Projections.

The Commission orders:

(A) The 2019 Formal Challenge is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Ameren Illinois is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.